

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SPACE DATA CORPORATION,) CV-16-3260-BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) MAY 31, 2019
)
ALPHABET INC., GOOGLE LLC, AND) PAGES 1 - 45
LOON LLC,)
)
DEFENDANTS.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: HOSIE RICE LLP
BY: DARRELL ATKINSON
600 MONTGOMERY STREET, 34TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

FOR THE DEFENDANTS: KEKER, VAN NEST & PETERS LLP
BY: MATTHIAS KAMBER
MATTHEW WERDEGAR
633 BATTERY STREET
SAN FRANCISCO, CALIFORNIA 94111

OFFICIAL COURT REPORTER:
IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

MAY 31, 2019

2 P R O C E E D I N G S

3 (COURT CONVENED AT 9:02 A.M.)

09:02AM 4 THE COURT: CALLING CASE 16-3260, SPACE DATA
09:02AM 5 CORPORATION VERSUS ALPHABET, ET AL.

09:02AM 6 COUNSEL, PLEASE STATE YOUR APPEARANCES.

09:02AM 7 MR. ATKINSON: DARRELL ATKINSON FOR PLAINTIFF,
09:02AM 8 SPACE DATA.

09:02AM 9 THE COURT: HELLO, MR. ATKINSON. NICE TO SEE YOU.

09:02AM 10 MR. KAMBER: GOOD MORNING, YOUR HONOR.
09:02AM 11 MATHIAS KAMBER OF KEKER, VAN NEST & PETERS ON BEHALF OF
09:02AM 12 DEFENDANTS.

09:02AM 13 THE COURT: THANK YOU. GOOD MORNING.

09:02AM 14 MR. WERDEGAR: GOOD MORNING, YOUR HONOR.
09:02AM 15 MATTHEW WERDEGAR ALSO OF KEKER, VAN NEST & PETERS ALSO ON
09:02AM 16 BEHALF OF DEFENDANTS.

09:02AM 17 THE COURT: NICE TO SEE YOU BOTH. SINCE THIS MOTION
09:02AM 18 WAS FILED IT'S NARROWED SIGNIFICANTLY, OR THESE TWO MOTIONS,
09:02AM 19 BASED UPON MY SUMMARY JUDGMENT ORDER. I RECOGNIZE THAT A
09:02AM 20 SIGNIFICANT PART OF THE CASE IN THE '193 WAS WRAPPED UP IN THAT
09:02AM 21 ORDER. BUT I'VE LOOKED AT THE MOTION FOR RECONSIDERATION, AND
09:02AM 22 I GOT THAT RULING OUT JUST SO THAT WE'D KNOW WHAT WE WERE
09:03AM 23 DEALING WITH TODAY.

09:03AM 24 SO LET'S GO FORWARD ON THIS. I'M ONLY GOING TO BE DEALING
09:03AM 25 WITH THEN SPACE DATA'S MOTION; IS THAT CORRECT, MR. KAMBER?

09:03AM 1 MR. KAMBER: THAT IS CORRECT, YOUR HONOR.

09:03AM 2 THE COURT: OKAY. EXCUSE ME. WE WILL, OF COURSE,
09:03AM 3 TERMINATE YOURS AS MOOT BECAUSE OF THE RULING.

09:03AM 4 IT SEEMS TO ME, MR. ATKINSON, THAT YOUR MOTION AS TO
09:03AM 5 DR. HANSMAN AND DR. INGBERMAN REALLY RELY ON THE SAME ISSUE. I
09:03AM 6 MUST SAY THAT IT'S A CONCERNING ISSUE TO ME, AND I -- SO I
09:03AM 7 THINK WE SHOULD PROBABLY SPEND A LITTLE BIT OF TIME TALKING
09:03AM 8 ABOUT IT.

09:03AM 9 MR. ATKINSON: YES, YOUR HONOR. WOULD YOU LIKE ME
09:03AM 10 TO APPROACH THE PODIUM?

09:03AM 11 THE COURT: YES. SURE.

09:03AM 12 MR. ATKINSON: YOUR HONOR, SO IN THIS SITUATION
09:03AM 13 DR. MEYER, THE EXPERT THAT IS BEING REBUTTED, IS A DAMAGES
09:03AM 14 EXPERT. SHE MAKES REFERENCES TO LIABILITY BUT IT IS
09:04AM 15 ASSUMPTIONS. IN THOSE ASSUMPTIONS SHE'S CITING TO DISCOVERY
09:04AM 16 RESPONSES, SHE'S CITING TO COMPLAINTS. IN HER DEPOSITION SHE
09:04AM 17 AFFIRMS THAT ALL SHE'S DOING IS SHE HAS ASSUMED LIABILITY AND
09:04AM 18 SHE'S OPINING ON DAMAGES.

09:04AM 19 THE COURT: SO, YOU KNOW, SOMETIMES WITH -- IN AN
09:04AM 20 INFRINGEMENT CASE WE WOULD GET AN EXPERT WHO WOULD SIMPLY
09:04AM 21 PRESUME INFRINGEMENT BUT THEN GO INTO THE GEORGIA-PACIFIC
09:04AM 22 FACTORS LEAVING THE MANNER AND SCOPE OF INFRINGEMENT ASIDE
09:04AM 23 BECAUSE IT'S NOT RELEVANT.

09:04AM 24 SO THAT FOUNDATION ON WHICH THE DAMAGES EXPERT MUST BEGIN
09:04AM 25 IS REALLY JUST STRAIGHTFORWARD. THE ARGUMENT MADE BY GOOGLE

09:04AM 1 HERE IS I THINK REALLY OF A DIFFERENT SORT WHERE CERTAINLY
09:04AM 2 DR. MEYER ASSUMES THAT THERE'S MISUSE OF THE TRADE SECRET.

09:04AM 3 MR. ATKINSON: YES, YOUR HONOR.

09:04AM 4 THE COURT: BUT THEN SHE ACTUALLY, I THINK THAT
09:04AM 5 GOOGLE IS CORRECT, INTERTWINES INTO HER DAMAGES ANALYSIS THE
09:05AM 6 SHAPE AND FORM AND EFFECT OF PARTICULAR ASPECTS OF THE MISUSE
09:05AM 7 IN ORDER TO BUILD HER DAMAGES OPINION, AND THAT'S WHERE I HAVE
09:05AM 8 SOME CONCERNS, THAT MAKES IT DIFFERENT THAN IN THE NORMAL, IF
09:05AM 9 WE'RE IN THE PATENT ARENA, THE DAMAGES EXPERT WHO SIMPLY SAYS
09:05AM 10 FOR PURPOSES OF A HYPOTHETICAL NEGOTIATION WE ASSUME A VALID
09:05AM 11 PATENT AND INFRINGEMENT.

09:05AM 12 MR. ATKINSON: YOUR HONOR, I THINK I UNDERSTAND YOUR
09:05AM 13 CONCERN, BUT I DON'T THINK THAT'S ACTUALLY WHAT HAS HAPPENED
09:05AM 14 HERE.

09:05AM 15 THE COURT: OKAY.

09:05AM 16 MR. ATKINSON: SO HER OPINION IS RATHER
09:05AM 17 STRAIGHTFORWARD. SO IN THE BEGINNING THERE'S A LOT OF
09:05AM 18 INTRODUCTORY INFORMATION. SHE BASICALLY IS JUST LAYING, YOU
09:05AM 19 KNOW, THE BACKGROUND. THERE YOU CAN SEE THAT SHE'S REALLY NOT
09:05AM 20 OPINING ON ANYTHING. SHE'S BASICALLY JUST CITING TO
09:05AM 21 ALLEGATIONS.

09:05AM 22 THE COURT: SURE.

09:05AM 23 MR. ATKINSON: THEN SHE GETS TO UNJUST ENRICHMENT
09:05AM 24 THEORY, WHICH IS ACTUALLY A FEW PAGES LONG. AND THERE HERSELF
09:06AM 25 SHE SAYS, LOOK, IT'S THE DEVELOPMENT COSTS. SHE'S ASSUMING

09:06AM 1 THAT THE TRADE SECRETS WOULD BE VALUABLE TO GOOGLE, FOR
09:06AM 2 EXAMPLE. SHE'S ASSUMING THAT THAT INFORMATION IS NOT PUBLICLY
09:06AM 3 KNOWN. THOSE THINGS THEMSELVES ARE JUST LIABILITY ELEMENTS IN
09:06AM 4 A TRADE SECRET CASE.

09:06AM 5 I THINK PART OF THE CONFUSION MAY STEM FROM THE FACT THAT
09:06AM 6 IN A TRADE SECRET CASE, UNLIKE A PATENT CASE, THE WORD "VALUE"
09:06AM 7 GETS THROWN AROUND IN A DIFFERENT CONTEXT, IN THE LIABILITY
09:06AM 8 CONTEXT. I THINK IT'S THAT LIABILITY CONTEXT IS ACTUALLY WHAT
09:06AM 9 DR. HANSMAN AND DR. INGBERMAN IS COMING FROM AS OPPOSED TO WHAT
09:06AM 10 DR. MEYER HAS DONE.

09:06AM 11 SO, THEREFORE, THE TRADE SECRET ON THE STATUTES MUST HAVE
09:06AM 12 INDEPENDENT ECONOMIC VALUE, AND THAT'S A LIABILITY QUESTION. I
09:06AM 13 THINK THAT'S ACTUALLY WHAT DR. HANSMAN AND DR. INGBERMAN ARE
09:06AM 14 GETTING AT.

09:06AM 15 YOU CAN SEE THAT, YOUR HONOR, WHEN YOU LOOK AT THEIR
09:06AM 16 REPORT BECAUSE --

09:06AM 17 THE COURT: CAN YOU SLOW DOWN.

09:06AM 18 MR. ATKINSON: SORRY, YOUR HONOR. YOU CAN SEE THAT
09:06AM 19 WHEN YOU LOOK AT THEIR REPORTS BECAUSE THEY'RE GOING ON AND ON
09:06AM 20 AND ON ABOUT WHAT IS PUBLICLY KNOWN, WHAT PUBLIC DISCLOSURES
09:06AM 21 WERE MADE.

09:06AM 22 SO, FOR EXAMPLE, DR. HANSMAN ADMITS THAT DR. MEYER DID NOT
09:07AM 23 LOOK AT THE PHOTOGRAPHS, AND HE UNDERSTANDS THAT BASED ON THE
09:07AM 24 REPORT, AND THEN HE HIMSELF THEN GOES AND LOOKS AT THE
09:07AM 25 PHOTOGRAPHS, ANALYZES THEM, COMPARES THEM TO PUBLIC INFORMATION

09:07AM 1 AND COMPARES THEM TO THE PATENTS. THAT IS ALL STUFF THAT IS
09:07AM 2 WAY BEYOND THE SCOPE OF DR. MEYER'S OPINION, AND, THEREFORE, IS
09:07AM 3 EXCLUDABLE UNDER THE RELEVANT CASE LAW.

09:07AM 4 EVEN UNDER THE LAW THAT DEFENDANTS CITE IT WOULD NOT BE
09:07AM 5 WITHIN THE SAME SUBJECT MATTER. IT'S NOT A SITUATION WHERE A
09:07AM 6 DAMAGES EXPERT IS REBUTTING A DAMAGES EXPERT. IT'S LIABILITY
09:07AM 7 VERSUS DAMAGES.

09:07AM 8 I DON'T THINK DR. MEYER HAS CROSSED THE LINE WHERE SHE'S
09:07AM 9 GONE INTO THESE LIABILITY ISSUES. IT'S JUST A -- IT'S ACTUALLY
09:07AM 10 AN UNJUST ENRICHMENT THEORY LOOKING AT DEVELOPMENT COSTS, AND
09:07AM 11 DR. HANSMAN AND DR. INGBERMAN ARE NOT PROPERLY ADDRESSING THAT.
09:07AM 12 THEY'VE GONE WELL BEYOND THAT AND GONE INTO LIABILITY ISSUES.

09:07AM 13 THE COURT: SO DR. INGBERMAN IS YOUR DAMAGES EXPERT;
09:07AM 14 CORRECT?

09:07AM 15 MR. ATKINSON: DR. INGBERMAN IS GOOGLE'S.

09:07AM 16 THE COURT: I'M SORRY, THE DEFENDANTS?

09:07AM 17 MR. ATKINSON: YES.

09:07AM 18 THE COURT: IS GOOGLE'S DAMAGES EXPERT. SO HE, OF
09:08AM 19 COURSE, CANNOT OPINE. AND THEN IT WOULD BE A TRUE DAUBERT
09:08AM 20 MOTION IF HE WAS TRYING TO OPINE ON MISUSE BECAUSE HE'S NOT.

09:08AM 21 HE'S AN ECONOMIST; CORRECT?

09:08AM 22 MR. ATKINSON: YES, YOUR HONOR. AND IN THAT RESPECT
09:08AM 23 NOT ONLY DOES HE NOT HAVE THE EXPERTISE TO OPINE ON MISUSE, HE
09:08AM 24 ALSO DOES NOT HAVE THE EXPERTISE TO OPINE ON WHAT IS GENERALLY
09:08AM 25 KNOWN, AND, THEREFORE, OPINE ON WHAT DEPRIVES ECONOMIC VALUE OR

09:08AM 1 NOT.

09:08AM 2 THE COURT: SO LET ME ASK YOU ABOUT THE OTHER POINT
09:08AM 3 THAT I THOUGHT WAS CONCERNING TO ME IN GOOGLE'S PAPERS, AND,
09:08AM 4 THAT IS, IT APPEARS THAT THROUGHOUT THE DISCOVERY PROCESS THAT
09:08AM 5 SPACE DATA TOLD GOOGLE THAT THE MISUSE EVIDENCE WOULD COME
09:08AM 6 THROUGH AN EXPERT.

09:08AM 7 YOU THEN CHOSE TO NOT HAVE AN EXPERT ON MISUSE.

09:08AM 8 NOW, I AGREE WITH YOU. YOU DON'T NEED AN EXPERT FOR
09:08AM 9 MISUSE OF THE TYPE OF THEORY THAT YOU'RE PUTTING FORTH.

09:08AM 10 BUT IF YOU MISLED GOOGLE THROUGHOUT THE DISCOVERY PROCESS
09:09AM 11 AND THEY DIDN'T KNOW UNTIL THE DATE EXPERT REPORTS WERE DUE
09:09AM 12 THAT YOU WEREN'T PRODUCING ONE ON MISUSE, WHAT WOULD THEIR
09:09AM 13 REMEDY BE WHEN THEY WERE PROPERLY, OR REASONABLY ANYWAY,
09:09AM 14 RELYING ON THEIR OPPORTUNITY TO REBUT YOUR EXPERT ON LIABILITY?

09:09AM 15 MR. ATKINSON: YOUR HONOR, IF I MAY TAKE THAT
09:09AM 16 TWOFOLD. SO, ONE, I AM DISPUTING THE FACT THAT THEY WERE
09:09AM 17 MISLED AND THEN, TWO --

09:09AM 18 THE COURT: SURE. OKAY.

09:09AM 19 MR. ATKINSON: THE ONLY EVIDENCE THAT GOOGLE CITED
09:09AM 20 AS TO WHETHER OR NOT THEY MISLED WAS NOT AN INTERROGATORY
09:09AM 21 RESPONSE BUT THE OBJECTIONS TO THE INTERROGATORY RESPONSE. THE
09:09AM 22 FULL SENTENCE --

09:09AM 23 THE COURT: WELL, THAT'S -- I MEAN, NO PERSON -- NO
09:09AM 24 ATTORNEY IN YOUR FIRM WOULD SAY THAT THEY WERE ATTEMPTING --
09:09AM 25 THAT THEY MISSTATED THAT, WOULD THEY? I'M SURE THEY HONESTLY

09:09AM 1 SIGNED THOSE PAPERS.

09:09AM 2 MR. ATKINSON: YES, YOUR HONOR, BUT IT'S AN
09:09AM 3 OBJECTION. IT RESERVES RIGHTS. IT'S NOT A REPRESENTATION THAT
09:09AM 4 EXPERTS WILL DEFINITELY BE USED.

09:09AM 5 AND THAT SAME SENTENCE, YOUR HONOR, ALSO TALKS ABOUT
09:10AM 6 NEEDING FACT DISCOVERY WHICH WAS EXCISED FROM GOOGLE'S --

09:10AM 7 THE COURT: DID YOU SUPPLEMENT YOUR INTERROGATORY
09:10AM 8 RESPONSES, THEN, WHEN YOU DIDN'T HAVE AN EXPERT?

09:10AM 9 MR. ATKINSON: I DO NOT BELIEVE WE DID, YOUR HONOR.

09:10AM 10 THE COURT: PROBABLY NOT.

09:10AM 11 MR. ATKINSON: BUT THE 26(A) (2) DISCLOSURES WOULD
09:10AM 12 HAVE BEEN THE RELEVANT INFORMATION THAT WE WERE NOT GOING TO
09:10AM 13 HAVE AN EXPERT ON THAT SUBJECT ONCE THEY SAW THE REPORTS.

09:10AM 14 THE COURT: UH-HUH.

09:10AM 15 MR. ATKINSON: AND THEN THE OTHER ISSUE WITH THAT IS
09:10AM 16 BASED ON THAT ONE STATEMENT THAT ACTUALLY READS MANY OF
09:10AM 17 GOOGLE'S CORPORATE WITNESSES MAY HAVE NOT YET TESTIFIED, AND
09:10AM 18 THEN IT GOES ON TO SAY TO THE EXPERT STATEMENT, WE TOOK THIS
09:10AM 19 TESTIMONY AND DECIDED NOT TO HAVE AN EXPERT OPINE, GOOGLE KNEW
09:10AM 20 THAT THESE WERE KEY AND CRITICAL ISSUES IN THE CASE.

09:10AM 21 SO WHILE I'M NOT DISPUTING THE BURDEN, GOOGLE ITSELF
09:10AM 22 IDENTIFIED THE THINGS THAT DR. INGBERMAN AND DR. HANSMAN OPINE
09:10AM 23 ON IN THEIR AFFIRMATIVE DEFENSES MULTIPLE TIMES.

09:10AM 24 SO THAT'S INDEPENDENT DEVELOPMENT, GENERALLY KNOWN,
09:10AM 25 GENERALLY AVAILABLE --

09:10AM 1 THE COURT: SO A LOT OF THAT IS NOT AN AFFIRMATIVE
09:10AM 2 DEFENSE WHERE -- AND BY "THAT" I MEAN WHERE GOOGLE WOULD HAVE
09:11AM 3 THE BURDEN OF PROOF.

09:11AM 4 USUALLY THEY GET WASHED OUT BEFORE I HAVE TO BE CONCERNED,
09:11AM 5 BUT THERE IS A STUPID AND ELEMENTARY OVERUSE OF AFFIRMATIVE
09:11AM 6 DEFENSES.

09:11AM 7 AS AN AFFIRMATIVE DEFENSE ALLEGING THAT THE PARTY CAN'T
09:11AM 8 PROVE AN ESSENTIAL ELEMENT IS NOT AN AFFIRMATIVE DEFENSE. SO
09:11AM 9 ANYTHING THAT GOOGLE MIGHT HAVE SAID IN ITS LABEL OF
09:11AM 10 AFFIRMATIVE DEFENSES, WHICH WAS A STATEMENT ON WHICH IT DIDN'T
09:11AM 11 BEAR THE BURDEN OF PROOF, IS NOT AN AFFIRMATIVE DEFENSE.

09:11AM 12 MR. ATKINSON: YES, YOUR HONOR. MY POINT IS A
09:11AM 13 LITTLE BIT DIFFERENT. I'M NOT SAYING THAT GOOGLE HAD THE
09:11AM 14 BURDEN ON THOSE.

09:11AM 15 THE COURT: OKAY.

09:11AM 16 MR. ATKINSON: WHAT I'M SAYING IS THAT IT'S PROOF
09:11AM 17 THAT GOOGLE KNEW THAT THESE WERE KEY ISSUES IN PLAINTIFF'S
09:11AM 18 CASE-IN-CHIEF, AND, THEREFORE, THERE WAS NOTHING UNFAIR. THESE
09:11AM 19 WERE ANTICIPATED KEY ELEMENTS.

09:11AM 20 THE COURT: WELL, YOU KNOW, YOU CITE MY CLEAR-VIEW
09:11AM 21 TECHNOLOGY ORDER, AND, FRANKLY, YOU MISCITE IT OR YOU
09:11AM 22 MISUNDERSTOOD WHAT WAS THE FACTUAL CIRCUMSTANCES OF THAT CASE.

09:12AM 23 IN THAT CASE IT WAS AN EXPERT'S REPORT, A TECHNICAL
09:12AM 24 EXPERT'S REPORT APPENDED FULLY TO THE DAMAGES EXPERT'S REPORT
09:12AM 25 AS A WAY OF OFFERING EVIDENCE TO PROVE A TRUE COUNTERCLAIM AND

09:12AM 1 AFFIRMATIVE DEFENSE.

09:12AM 2 THAT'S WHY IT WASN'T ALLOWED, AND IT WAS, IT WAS MAYBE
09:12AM 3 UNDER THE UMBRELLA OF A SIMILAR CATEGORY TO THIS, BUT FACTUALLY
09:12AM 4 IT WAS DISTINCT.

09:12AM 5 BUT HERE I GUESS I'M JUST REALLY TROUBLED BY -- I MEAN,
09:12AM 6 CERTAINLY -- I'M JUST TRYING TO BREAK THIS DOWN. SPACE DATA
09:12AM 7 WAS NOT REQUIRED TO HAVE AN EXPERT ON LIABILITY IN THIS CASE.
09:12AM 8 NO ONE IS ARGUING OTHERWISE.

09:12AM 9 AND THERE'S NO OBJECTION TO YOUR DISCOVERY RESPONSES, AT
09:12AM 10 LEAST NOT YET. I GUESS WE'LL SEE THAT IN THE MILLS BECAUSE
09:12AM 11 THAT'S NOT WHAT WE'RE DOING HERE TODAY.

09:12AM 12 SO CLEARLY WE HAVE A REBUTTAL REPORT THAT IS BY GOOGLE
09:13AM 13 THAT IS ATTEMPTING TO REBUT THE UNDERLYING ASSUMPTIONS THAT
09:13AM 14 DR. MEYER RELIED UPON.

09:13AM 15 MR. ATKINSON: YES, YOUR HONOR.

09:13AM 16 THE COURT: AND I'M JUST STILL A LITTLE STYMIED BY
09:13AM 17 HOW -- I DON'T THINK A DEFENDANT IS REQUIRED TO SHADOWBOX AND
09:13AM 18 PRESENT AN EXPERT REPORT IN ADVANCE OF SEEING THE PLAINTIFF'S
09:13AM 19 THEORY AND PROOF OF LIABILITY.

09:13AM 20 THE DEFENDANT ONLY NEEDS TO KNOCK OUT THE THEORY AND
09:13AM 21 EVIDENCE YOU PRESENT AND NOT WHAT IT BELIEVES YOU MIGHT BE ABLE
09:13AM 22 TO. THAT WOULD BE FUNDAMENTALLY UNFAIR. SO THAT'S -- THAT'S
09:13AM 23 WHY I'M STRUGGLING WITH THIS.

09:13AM 24 MR. ATKINSON: YOUR HONOR, THERE'S TWO PARTS. LET
09:13AM 25 ME ACTUALLY FIRST CIRCLE BACK. I DON'T THINK I FULLY ANSWERED

09:13AM 1 YOUR OTHER QUESTION --

09:13AM 2 THE COURT: OKAY.

09:13AM 3 MR. ATKINSON: -- AS TO WHAT GOOGLE COULD HAVE DONE
09:13AM 4 DIFFERENTLY.

09:13AM 5 PRETTY MUCH -- I AM NOT SURE IF IT WAS THE DAY AFTER OR A
09:13AM 6 FEW DAYS AFTER WE RECEIVED THE REPORT, WE SENT GOOGLE A LETTER
09:14AM 7 SAYING THAT WE BELIEVE THIS IS IMPROPER REBUTTAL, AND THEN WE
09:14AM 8 RAISED IT AGAIN IN HANSMAN'S DEPOSITION AND WE RAISE IT AGAIN
09:14AM 9 IN THE SUMMARY JUDGMENT OPPOSITION.

09:14AM 10 AT NO TIME DID GOOGLE MOVE -- THERE'S NOTHING THAT GOOGLE
09:14AM 11 CITES TO PUT THE BURDEN ON THE PLAINTIFF TO COME FORWARD AND
09:14AM 12 ASK FOR AN AMENDMENT TO THE SCHEDULE SO THAT WE CAN THEN BRING
09:14AM 13 A SURREBUTTAL.

09:14AM 14 WHAT GOOGLE SHOULD HAVE DONE WAS COME INTO THE COURT AND
09:14AM 15 ASKED FOR LEAVE AND TO MODIFY THE SCHEDULE.

09:14AM 16 INSTEAD, THEY'VE TRIED TO PUT THE BURDEN ON US WHEN
09:14AM 17 THEY'RE THE ONES WHO WHEN THEY SAW THAT AND IF THEY COULD CLAIM
09:14AM 18 ACTUAL SURPRISE SHOULD HAVE THEN DONE SOMETHING.

09:14AM 19 TO YOUR SECOND POINT, YOUR HONOR, I THINK EVEN UNDER
09:14AM 20 GOOGLE'S CASE LAW THAT THEY CITE, FOR EXAMPLE, THE SERAS
09:14AM 21 (PHONETIC) OPINION AND TLC OPINION, IT IS VERY CLEAR THAT THE
09:14AM 22 RISK IS ON THE DEFENDANT. SO, YES, THE DEFENDANT DOESN'T HAVE
09:14AM 23 TO PUT IN AN OPENING REPORT. THEY CERTAINLY DON'T HAVE THE
09:14AM 24 BURDEN FOR IT. BUT THEY ARE MAKING THAT CONSCIOUS DECISION,
09:14AM 25 AND THEY ARE TAKING ON THE RISK. SO THAT WOULD HAVE BEEN

09:15AM 1 GOOGLE'S DECISION. AS TO BEARING THE RISK, AGAIN, THEY CANNOT
09:15AM 2 COME UP WITH THE ONUS OF SPACE DATA TO HAVE DONE SOMETHING AND
09:15AM 3 PUT THEM ON NOTICE THAT WE THOUGHT WAS IMPROPER AND SAT BACK
09:15AM 4 AND DONE NOTHING UNTIL NOW, YOUR HONOR.

09:15AM 5 THE COURT: AND THESE ARGUMENTS REALLY APPLY TO BOTH
09:15AM 6 EXPERTS THAT ARE AT ISSUE HERE?

09:15AM 7 MR. ATKINSON: YES, YOUR HONOR. I GUESS
09:15AM 8 SPECIFICALLY IT WAS --

09:15AM 9 THE COURT: AND WHAT OTHER ISSUES WERE THERE WITH
09:15AM 10 DR. INGBERMAN?

09:15AM 11 MR. ATKINSON: THE OTHER ISSUES ARE THAT IT LACKS
09:15AM 12 FOUNDATION, YOUR HONOR.

09:15AM 13 SO WITH DR. INGBERMAN IT'S NOT JUST THAT HE IS IMPROPERLY
09:15AM 14 REBUTTING. HE HAS NO FOUNDATION FOR HIS REBUTTAL, AND THAT'S
09:15AM 15 BECAUSE HE IS AN ECONOMIST. HE'S NOT A TECHNICAL EXPERT. HE
09:15AM 16 CANNOT LOOK TO PUBLIC INFORMATION AND SAY WHETHER OR NOT HE
09:15AM 17 BELIEVES THAT'S WITHIN THE SCOPE OF THE 2019 OR NOT, YOUR
09:15AM 18 HONOR.

09:15AM 19 THE COURT: WELL, HE'S CLEARLY A DAMAGES EXPERT AND
09:16AM 20 NOT A TECHNICAL EXPERT.

09:16AM 21 I'M JUST LOOKING AT MY NOTES TO SEE IF THERE'S --

09:16AM 22 (PAUSE IN PROCEEDINGS.)

09:16AM 23 THE COURT: WELL, IT SEEMS TO ME THAT DR. INGBERMAN
09:16AM 24 CAN CERTAINLY TESTIFY ABOUT HIS OPINIONS ON VALUE OF THE TRADE
09:16AM 25 SECRET AND, JUST AS DR. MEYER DOES, HE CAN BUILD IN AND DISCUSS

09:17AM 1 THE ASSUMPTIONS ON WHICH HE RELIED.

09:17AM 2 MR. ATKINSON: YOUR HONOR, IN THIS SITUATION,
09:17AM 3 BECAUSE I DON'T BELIEVE VALUE IN THIS CONTEXT IS ACTUALLY THE
09:17AM 4 DAMAGES CONTEXT FOR VALUE, I DON'T BELIEVE THAT IS CORRECT.

09:17AM 5 AGAIN, I THINK WHEN HE'S SAYING THERE'S NO VALUE, HE'S
09:17AM 6 SAYING IT'S NOT VALUABLE BECAUSE IT'S NOT SECRET, WHICH IS
09:17AM 7 DIFFERENT FROM DR. MEYER'S OPINION WHICH IS THAT THE DAMAGES IS
09:17AM 8 THE UNJUST DEVELOPMENT COSTS.

09:17AM 9 SO IN THIS CASE FOR HIM TO SAY THAT IT HAS NO VALUE IS FOR
09:17AM 10 HIM TO -- AND HE'S NOT -- IT'S NOT A SITUATION WHERE HE'S USING
09:17AM 11 A LIABILITY BASIS FROM A TECHNICAL EXPERT TO THEN CARRY OVER
09:17AM 12 INTO SOME SORT OF MEANINGFUL DAMAGES ANALYSIS. THERE IS NONE.
09:17AM 13 HE WOULD JUST BE PARROTING DR. HANSMAN IN THAT CONTEXT AND BE
09:17AM 14 ADDING NOTHING EXTRA HELPFUL TO THE JURY.

09:17AM 15 THE COURT: OKAY. WELL, I THINK THERE MAY BE
09:17AM 16 SOMETHING TO THAT IN LIMITING DR. INGBERMAN.

09:17AM 17 LET ME HEAR FROM MR. KAMBER FOR A FEW MINUTES OR
09:18AM 18 MR. WERDEGAR, I DON'T KNOW WHO IS GOING TO BE TAKING THIS ON,
09:18AM 19 AND THEN I'LL COME BACK TO YOU ON THIS.

09:18AM 20 MR. ATKINSON: THANK YOU, YOUR HONOR.

09:18AM 21 THE COURT: HELLO, MR. KAMBER.

09:18AM 22 MR. KAMBER: GOOD MORNING.

09:18AM 23 THE COURT: I GENERALLY THINK IT'S A DIFFICULT SPOT
09:18AM 24 TO BE IN WHERE THE REBUTTAL REPORT IS STRETCHED BEYOND WHAT IT
09:18AM 25 SHOULD BE.

09:18AM 1 I'M CONCERNED WITH DR. INGBERMAN THAT YOU MAY HAVE
09:18AM 2 ACTUALLY CROSSED THE LINE HERE BECAUSE DR. INGBERMAN CERTAINLY
09:18AM 3 CAN'T TESTIFY THAT THE TRADE SECRETS HAVE NO VALUE BECAUSE
09:18AM 4 THEY'RE NOT TRADE SECRETS.

09:18AM 5 SO THAT'S WHAT MR. ATKINSON IS SUGGESTING THE INGBERMAN
09:18AM 6 OPINIONS REALLY SAY, AND HE DOES GO INTO AN ANALYSIS OF HOW
09:18AM 7 MUCH PUBLIC INFORMATION THERE IS.

09:18AM 8 MR. KAMBER: SO MR. WERDEGAR, I THINK, WAS MORE
09:18AM 9 PREPARED TO ADDRESS THE DR. INGBERMAN ISSUE. SO I'M HAPPY TO
09:19AM 10 LET HIM TAKE THIS AND THEN CIRCLE BACK ON THE OTHER ISSUES.

09:19AM 11 THE COURT: THAT WOULD BE GOOD. THANK YOU.

09:19AM 12 GOOD MORNING, MR. WERDEGAR.

09:19AM 13 MR. WERDEGAR: GOOD MORNING, YOUR HONOR. THANK YOU.
09:19AM 14 WE DIVIDED IT UP BY EXPERT.

09:19AM 15 THE COURT: SURE. OF COURSE. THAT MAKES SENSE.

09:19AM 16 MR. WERDEGAR: AT BOTTOM HERE I THINK THERE'S A
09:19AM 17 MISCHARACTERIZATION BY SPACE DATA OF WHAT DR. INGBERMAN'S
09:19AM 18 OPINION THAT IS BEING CHALLENGED ACTUALLY IS.

09:19AM 19 DR. INGBERMAN'S OPINION IS A CRITIQUE OF THE METHODOLOGY
09:19AM 20 USED BY DR. MEYER.

09:19AM 21 AND WHAT DR. INGBERMAN IS GOING TO TESTIFY IS THAT
09:19AM 22 DR. MEYER ASSUMES THAT BUT FOR TAKING THE TRADE SECRETS FROM
09:19AM 23 SPACE DATA, GOOGLE WOULD HAVE HAD TO START FROM SCRATCH AND
09:19AM 24 SPEND ALL OF THE MONEY THAT SPACE DATA SPENT TO COME UP WITH
09:19AM 25 THE SAME INFORMATION.

09:19AM 1 WHAT DR. INGBERMAN SAYS IS THAT THAT'S NOT A REASONABLE
09:19AM 2 WAY OF APPROACHING THIS BECAUSE DR. MEYER FAILS TO CONSIDER THE
09:19AM 3 FACT THAT THERE IS A BODY OF PUBLIC INFORMATION OUT THERE IN
09:19AM 4 THE WORLD ON THE SAME SUBJECT MATTER INCLUDING, IN PARTICULAR,
09:19AM 5 DISCLOSURES BY SPACE DATA.

09:20AM 6 DR. INGBERMAN IS NOT GOING TO SAY THAT THE TRADE SECRETS
09:20AM 7 ARE NOT TRADE SECRETS OR THE TECHNICAL TRADE SECRETS ARE OR
09:20AM 8 NOT.

09:20AM 9 BUT WHAT HE SAYS IS THAT WE RECOGNIZE THAT THERE'S THIS
09:20AM 10 BODY OF PUBLIC INFORMATION OUT THERE THAT EVEN SPACE DATA
09:20AM 11 ACKNOWLEDGES, AND DR. MEYER FAILS TO EVALUATE THE INCREMENTAL
09:20AM 12 ADDITIONAL VALUE OF WHATEVER IS SECRET ABOUT THESE TRADE
09:20AM 13 SECRETS VERSUS THE BODY OF PUBLIC INFORMATION.

09:20AM 14 THE VALUE THAT GOOGLE WOULD HAVE GOTTEN UNJUSTLY FROM
09:20AM 15 MISAPPROPRIATION WOULD BE WHATEVER ADDITIONAL INFORMATION
09:20AM 16 EXISTS IN THOSE TRADE SECRETS BEYOND WHAT IS ALREADY PUBLIC
09:20AM 17 ABOUT THE WINDS OR ABOUT THERMAL MANAGEMENT AND THE LIKE.

09:20AM 18 AND DR. MEYER DOESN'T EFFECTIVELY APPORTION, SHE DOESN'T
09:20AM 19 APPORTION BETWEEN WHAT IS SECRET IN THESE TRADE SECRETS AND ALL
09:20AM 20 OF THE INFORMATION ON THE SAME TOPIC.

09:20AM 21 AND DR. MEYER, HER OPINION SAYS WHAT GOOGLE BENEFIT -- HOW
09:20AM 22 GOOGLE BENEFITTED FROM THESE TRADE SECRETS IS BECAUSE IT
09:20AM 23 REACHED CERTAIN CONVICTIONS OR CONCLUSIONS ABOUT THE VIABILITY
09:21AM 24 OF PROJECT LOON, AND DR. MEYER DOES NOT DO ANY ASSESSMENT AS TO
09:21AM 25 WHETHER OR NOT GOOGLE COULD HAVE ACHIEVED THOSE SAME

09:21AM 1 CONVICTIONS OR CONCLUSIONS USING JUST PUBLIC INFORMATION.

09:21AM 2 THE COURT: SO HOW WOULD SHE HAVE HAD THE TECHNICAL
09:21AM 3 ABILITY TO EVALUATE -- LET'S SAY THAT WE GAVE DR. MEYER A STACK
09:21AM 4 OF PUBLIC INFORMATION BECAUSE IF IT'S PUBLIC, YOU CAN GIVE HER
09:21AM 5 A THUMB DRIVE AND SAY HERE'S EVERYTHING THAT IS PUBLIC. WHY
09:21AM 6 DON'T YOU TELL US, DR. MEYER, THE VALUE OF THE DIFFERENCE
09:21AM 7 BETWEEN WHAT WAS PUBLIC AND WHAT WAS IN THE TRADE SECRETS?
09:21AM 8 SHE'S NOT A TECHNICAL EXPERT. HOW COULD SHE DO THAT?

09:21AM 9 MR. WERDEGAR: WELL, I THINK THAT'S IN PART
09:21AM 10 DR. INGBERMAN'S -- SHE'S GOING TO OFFER AN OPINION. HER
09:21AM 11 OPINION IS THAT IF GOOGLE HAD NOT MISAPPROPRIATED, IT WOULD
09:21AM 12 HAVE HAD TO SPEND ALL OF THE SAME MONEY THAT SPACE DATA SPENT
09:21AM 13 TO GET TO THE SAME LEVEL OF KNOWLEDGE.

09:21AM 14 THE COURT: OKAY.

09:21AM 15 MR. WERDEGAR: THAT'S HER OPINION.

09:21AM 16 AND DR. MEYER -- DR. INGBERMAN, OUR EXPERT, SAYS HOLD ON A
09:22AM 17 MINUTE. THAT'S ACTUALLY NOT AN APPROPRIATE WAY TO EVALUATE
09:22AM 18 THOSE TRADE SECRETS. AS AN ECONOMIST, YOU SHOULD BE LOOKING AT
09:22AM 19 THE DELTA, THE DIFFERENCE BETWEEN THEM AND THE PUBLIC
09:22AM 20 INFORMATION.

09:22AM 21 THE COURT: SURE. SO HE'S GOING TO STAY AT THAT
09:22AM 22 30,000 FOOT LEVEL IN HIS OPINION?

09:22AM 23 MR. WERDEGAR: WITH RESPECT TO THE TECHNICAL TRADE
09:22AM 24 SECRETS, YES, YOUR HONOR.

09:22AM 25 THE COURT: SO HE'S SIMPLY GOING TO SAY THERE IS A

09:22AM 1 BODY OF PUBLIC INFORMATION. I'M NOT GOING TO TELL YOU -- I
09:22AM 2 CAN'T DISCUSS WITH YOU WHAT THAT IS, BUT THERE IS A BODY AND
09:22AM 3 IT'S SIMPLY A FAILURE OF HER METHODOLOGY?

09:22AM 4 SO THERE'S A DIFFERENCE BETWEEN THAT AND HIM GOING THROUGH
09:22AM 5 AND SAYING I'VE LOOKED AT THE PUBLIC INFORMATION, AND I'VE
09:22AM 6 LOOKED AT GOOGLE'S PRODUCT, AND GOOGLE COULD HAVE GOTTEN TO
09:22AM 7 WHERE IT IS TODAY WITHOUT THE TRADE SECRETS. THAT BECOMES
09:22AM 8 TECHNICAL.

09:22AM 9 MR. WERDEGAR: AGAIN, I THINK SOME -- AGAIN, THERE'S
09:22AM 10 SOME SUBTLETIES HERE THAT MATTER.

09:22AM 11 THE COURT: OKAY.

09:22AM 12 MR. WERDEGAR: SO HE WILL, I THINK, AT A MINIMUM, HE
09:22AM 13 WOULD KEEP IT AT THE HIGH LEVEL THAT IS DESCRIBED, BUT I THINK
09:22AM 14 THERE'S NO DISPUTE, AND IT WILL COME IN THE FACT RECORD, THAT
09:22AM 15 THERE WAS NEWS BROADCASTS THAT WERE DONE INSIDE SPACE DATA'S
09:23AM 16 FACILITIES AND ALL OF THOSE THINGS.

09:23AM 17 THE COURT: THAT IS GOING TO COME IN THROUGH FACT
09:23AM 18 WITNESSES.

09:23AM 19 MR. WERDEGAR: RIGHT.

09:23AM 20 AND WHAT DR. INGBERMAN WILL SAY IS THIS EVIDENCE THAT HAS
09:23AM 21 COME IN, DR. MEYER DIDN'T CONSIDER THAT. IN PERFORMING HER
09:23AM 22 EVALUATION, SHE DIDN'T CONSIDER THE NEWS BROADCAST THAT HAD
09:23AM 23 BEEN PRESENTED HERE IN THIS COURTROOM TO THIS JURY, AND SHE
09:23AM 24 DIDN'T CONSIDER THE PUBLICATIONS AND PRESENTATIONS THAT WERE
09:23AM 25 MADE PUBLICALLY BY SPACE DATA ABOUT ITS BUSINESS, ABOUT WIND.

09:23AM 1 HE'S NOT GOING TO SAY THIS MEANS THESE ARE NOT TRADE
09:23AM 2 SECRETS. HE'S GOING TO SAY THAT SHE FAILED TO DO, DR. MEYER
09:23AM 3 FAILED TO DO THE APPROPRIATE ANALYSIS BECAUSE SHE DIDN'T
09:23AM 4 CONSIDER THIS BODY OF EVIDENCE. IT'S A METHODOLOGICAL
09:23AM 5 CHALLENGE TO THE WAY SHE WENT ABOUT VALUING IT.

09:23AM 6 THE COURT: SO HE'S -- WELL, JUST ON THE
09:23AM 7 FOUNDATIONAL ISSUE, I'M NOT TROUBLED BY DR. INGBERMAN GIVING
09:23AM 8 OPINIONS BASED UPON THE EVIDENCE THAT IS ALREADY PRESENTED TO
09:23AM 9 THE JURY OF THE PUBLICLY AVAILABLE INFORMATION.

09:24AM 10 WHAT HE CAN'T DO, AND MAYBE YOU'LL TELL ME THAT HE'S NOT
09:24AM 11 GOING TO BE OFFERED TO DO THIS, HE CAN'T THEN SAY, "IN MY
09:24AM 12 OPINION THE PUBLICLY AVAILABLE INFORMATION WAS SUFFICIENT TO
09:24AM 13 SUPPORT EVERYTHING THAT GOOGLE DID." THAT'S A LIABILITY ISSUE
09:24AM 14 AND NOT A STRICT DAMAGES ISSUE.

09:24AM 15 AND IT'S NOT ATTACKING THE METHODOLOGY TO THEN GO THE
09:24AM 16 OTHER -- AWAY FROM WHAT DR. MEYER FAILED TO DO AND TO THEN TALK
09:24AM 17 ABOUT AND WHAT THE PROPER ANALYSIS WOULD PROVIDE.

09:24AM 18 MR. WERDEGAR: I THINK I UNDERSTAND, YOUR HONOR. I
09:24AM 19 THINK THAT'S RIGHT.

09:24AM 20 HE'S NOT GOING TO SAY THAT THIS BODY OF PUBLIC INFORMATION
09:24AM 21 WOULD HAVE ALLOWED GOOGLE TO ACHIEVE THE SAME TECHNICAL
09:24AM 22 MILESTONE OR WOULD HAVE ALLOWED GOOGLE TO DO X.

09:24AM 23 THE COURT: OKAY. GOOD.

09:24AM 24 MR. WERDEGAR: WHAT HE IS GOING TO SAY IS THAT
09:24AM 25 DR. MEYER ASSUMES THAT YOU NEEDED THESE TRADE SECRETS TO REACH

09:24AM 1 THESE POINTS, AND SHE IGNORES THIS BODY OF PUBLIC INFORMATION
09:24AM 2 ON THE SAME TOPIC, AND SHE DOESN'T DO THE ANALYSIS THAT SHE
09:25AM 3 SHOULD HAVE.

09:25AM 4 THE COURT: THAT'S FINE. THAT'S PROPER REBUTTAL.

09:25AM 5 MR. WERDEGAR: BUT WITH ONE EXCEPTION. THIS IS THE
09:25AM 6 FINANCIAL TRADE SECRETS --

09:25AM 7 THE COURT: OKAY.

09:25AM 8 MR. WERDEGAR: -- WHERE I DON'T THINK THERE'S A
09:25AM 9 DISPUTE THAT DR. INGBERMAN AS AN ECONOMIST AND GIVEN HIS
09:25AM 10 CREDENTIALS AND BACKGROUND IS IN A POSITION TO ASSESS WHETHER
09:25AM 11 THE VALUE AND THE MATERIALITY OF THE INFORMATION THAT
09:25AM 12 SPACE DATA IS CLAIMING IS A TRADE SECRET AND HOW THAT MATCHES
09:25AM 13 UP WITH A VERY DETAILED ANALYSIS AND PRESENTATION OF ITS
09:25AM 14 BUSINESS AND FINANCIALS THAT SPACE DATA MADE PUBLIC, WHICH IS
09:25AM 15 THE STIFEL PRESENTATION.

09:25AM 16 THE COURT: SO TELL ME WHAT THE STIFEL PRESENTATION
09:25AM 17 IS.

09:25AM 18 MR. WERDEGAR: SHORTLY AFTER GOOGLE VISITED
09:25AM 19 SPACE DATA IN FEBRUARY OF 2008, SPACE DATA UNDERWENT --
09:25AM 20 EMBARKED UPON AN EFFORT TO RAISE MONEY IN THE PRIVATE MARKET.
09:25AM 21 THEY HAD AN INVESTMENT BANKER, STIFEL, PREPARE A PRIVATE
09:25AM 22 PLACEMENT MEMORANDUM WHICH IS TOUTING SPACE DATA'S BUSINESS AND
09:25AM 23 IT HAS FINANCIAL RESULTS. IT HAS ALL KINDS OF INFORMATION.

09:25AM 24 THAT REPORT WAS -- AND THIS WILL COME INTO EVIDENCE, AND
09:25AM 25 SPACE DATA MAY DISPUTE THIS, BUT OUR VIEW IS GOING TO BE THAT

09:26AM 1 THAT REPORT WAS MADE PUBLIC BY SPACE DATA. THEY SENT IT TO
09:26AM 2 PEOPLE WITHOUT ANY CONFIDENTIALITY DUTIES AND NOT UNDER NDA AND
09:26AM 3 ASKED THEM TO DISTRIBUTE IT ON TO POTENTIALLY INTERESTED
09:26AM 4 INVESTORS.

09:26AM 5 DR. INGBERMAN LOOKS AT THE FINANCIAL AND ECONOMIC
09:26AM 6 INFORMATION IN THAT STIFEL PRESENTATION. HE LOOKS AT THE
09:26AM 7 ALLEGED FINANCIAL TRADE SECRETS, WHICH ARE HISTORIC FINANCIALS
09:26AM 8 AND SOME BUSINESS MODEL INFORMATION, AND HE DOES DRAW
09:26AM 9 CONCLUSIONS ABOUT WHETHER OR NOT THERE'S ANYTHING MATERIALLY
09:26AM 10 DIFFERENT OR VALUABLE IN THE ALLEGED TRADE SECRETS VERSUS THAT
09:26AM 11 STIFEL PRESENTATION.

09:26AM 12 I DON'T THINK THERE'S A CHALLENGE TO HIS QUALIFICATIONS TO
09:26AM 13 DO THAT BY SPACE DATA.

09:26AM 14 THE COURT: SO IS THERE AN OBJECTION OR WILL IT BE
09:26AM 15 CONTESTED THAT THE STIFEL REPORT WAS PUBLIC?

09:26AM 16 MR. WERDEGAR: THAT WILL BE A POTENTIAL ISSUE AT
09:26AM 17 TRIAL. WE'RE GOING TO PRESENT EVIDENCE THROUGH A WITNESS THAT
09:26AM 18 HE RECEIVED IT, HE RECEIVED IT UNDER NO OBLIGATION OF NDA, HE
09:26AM 19 RECEIVED IT WITH AN INVITATION FROM SPACE DATA TO THEN PASS IT
09:26AM 20 ON.

09:26AM 21 THE COURT: SO GOOGLE HAD THE STIFEL REPORT AT THE
09:26AM 22 CRITICAL TIME?

09:26AM 23 MR. WERDEGAR: NO. IT WAS WITHIN A MATTER OF
09:27AM 24 MONTHS. A THIRD PARTY, A FORMER GOOGLE EMPLOYEE WHO WAS AT A
09:27AM 25 DIFFERENT EMPLOYER WAS GIVEN THIS BY SPACE DATA.

09:27AM 1 THE COURT: OKAY. SO THAT'S WHAT I'M TRYING TO
09:27AM 2 FOLLOW THE TRAIL HERE.

09:27AM 3 MR. WERDEGAR: YES.

09:27AM 4 THE COURT: SO THE EVIDENCE WILL BE PRESENTED THAT
09:27AM 5 THERE IS THE STIFEL REPORT THAT HAS SOME FINANCIAL INFORMATION
09:27AM 6 IN IT, AND GOOGLE WAS APPRISED OF THE STIFEL REPORT DURING THE
09:27AM 7 PERIOD OF TIME THAT IT WAS DEVELOPING LOON? BECAUSE IF THEY
09:27AM 8 LEARNED ABOUT IT IN THIS LITIGATION, WHO CARES.

09:27AM 9 MR. WERDEGAR: NO. BUT IN ORDER TO HAVE A TRADE
09:27AM 10 SECRET, YOUR HONOR, SPACE DATA NEEDS TO PROVE THAT THIS IS A
09:27AM 11 TRADE SECRET.

09:27AM 12 THE COURT: OKAY. THEN WE'RE BACK TO LIABILITY. IS
09:27AM 13 DR. INGBERMAN OFFERED AS AN EXPERT FOR YOUR LIABILITY OR JUST
09:27AM 14 FOR DAMAGES?

09:27AM 15 MR. WERDEGAR: HE IS OFFERED -- AGAIN, WE'RE IN THE
09:27AM 16 SAME SITUATION HERE WHERE DR. MEYER ASSUMES -- BUILT INTO
09:27AM 17 DR. MEYER'S DAMAGES OPINION IS AN OPINION THAT THIS FINANCIAL
09:27AM 18 INFORMATION HAS VALUE --

09:27AM 19 THE COURT: SURE.

09:27AM 20 MR. WERDEGAR: -- TO SOMEONE WHO DIDN'T OTHERWISE
09:28AM 21 HAVE IT. SO HE'S ATTACKING THAT, HE'S ATTACKING THAT PORTION
09:28AM 22 OF DR. MEYER'S OPINION.

09:28AM 23 THE COURT: BUT THERE'S -- I GUESS WHAT -- I'M
09:28AM 24 TRYING TO CATCH UP WITH YOU.

09:28AM 25 MR. WERDEGAR: NO. SURE. I UNDERSTAND.

09:28AM 1 THE COURT: SO IF I'M MAKING SOME INCORRECT
09:28AM 2 CONCLUSIONS, PLEASE HELP ME OUT.

09:28AM 3 BUT IF YOU NEED TO ESTABLISH TO THE JURY THAT THE STIFEL
09:28AM 4 REPORT WAS PUBLIC, AND -- IF THE ISSUE IS ON THE VALUE THEN IT
09:28AM 5 HAS TO BE INFORMATION THAT GOOGLE HAD TO ESTABLISH THAT IT
09:28AM 6 DEVELOPED THE PRODUCT WITHOUT THE BENEFIT OF THE TRADE SECRETS.

09:28AM 7 IF THE ISSUE IS TO DETERMINE THAT THE FINANCIAL TRADE
09:28AM 8 SECRETS ALLEGED IN THE CASE ARE NOT TRADE SECRETS BECAUSE THE
09:28AM 9 INFORMATION WAS NOT SECRET, THAT'S A LIABILITY ISSUE. SO
09:28AM 10 THAT'S WHY I'M ASKING YOU WAS DR. INGBERMAN DISCLOSED AS AN
09:29AM 11 EXPERT ON WHETHER OR NOT THE FINANCIAL TRADE SECRETS WERE, IN
09:29AM 12 FACT, TRADE SECRETS?

09:29AM 13 I'M THINKING HE PROBABLY WASN'T.

09:29AM 14 MR. WERDEGAR: WELL, I THINK AS YOU FRAME IT NOW,
09:29AM 15 YOUR HONOR, I THINK THE ISSUE WITH RESPECT TO THIS ASPECT OF
09:29AM 16 HIS OPINION THAT WE'RE TALKING ABOUT AS OPPOSED TO THE
09:29AM 17 METHODOLOGICAL CHALLENGE DOES CIRCLE BACK TO THE FACT THAT THIS
09:29AM 18 IS A -- THIS PORTION, I THINK, IS MORE SIMILAR THAN THE
09:29AM 19 ARGUMENT THAT IS HAPPENING WITH RESPECT TO DR. HANSMAN BECAUSE
09:29AM 20 HERE THE SAME POINTS YOU WERE MAKING BEFORE WITH RESPECT TO
09:29AM 21 DR. HANSMAN WILL APPLY HERE THAT THIS IS AN ISSUE AREA WHERE
09:29AM 22 SPACE DATA BEARS THE BURDEN, AND IT IS AN ISSUE AREA WHERE
09:29AM 23 AGAIN WE'RE LED TO BELIEVE THAT THERE WOULD BE AN AFFIRMATIVE
09:29AM 24 REPORT ON THE EXISTENCE OF TRADE SECRETS, ON -- AND THEN ON
09:29AM 25 MISUSE, WHICH DIDN'T, WHICH DIDN'T MATERIALIZE BUT THAT WAS THE

09:29AM 1 INDICATIONS DURING FACT DISCOVERY.

09:29AM 2 SO I THINK THE ARGUMENTS THAT WE'VE MADE WITH RESPECT TO
09:29AM 3 DR. HANSMAN AND THERE WOULD APPLY HERE TO DR. INGBERMAN.

09:30AM 4 DOES THAT MAKE SENSE?

09:30AM 5 THE COURT: YEAH. I'M -- I MEAN, I GENERALLY AGREE
09:30AM 6 WITH YOU THAT IT APPEARS THAT DR. INGBERMAN WOULD HAVE THE
09:30AM 7 QUALIFICATIONS TO EVALUATE FINANCIAL INFORMATION INTO -- IN THE
09:30AM 8 STIFEL REPORT AND COMPARE IT TO THE ALLEGED TRADE SECRET AND
09:30AM 9 DETERMINE WHETHER OR NOT GOOGLE COULD HAVE GOTTEN TO WHERE IT
09:30AM 10 WAS WITHOUT USING THE TRADE SECRET PORTION.

09:30AM 11 THAT'S -- NOW WE'RE AT A DIFFERENT ISSUE WHICH IS A LITTLE
09:30AM 12 BIT BEYOND THIS MOTION, BUT IT'S GOING TO GET ALL TIED UP IN
09:30AM 13 THE FINAL PRETRIAL MOTIONS AS TO THE PROPER DISCLOSURE HERE.

09:30AM 14 SO I -- YOU KNOW, THIS MAKES ME CIRCLE BACK TO A PROBLEM
09:30AM 15 THAT I'M SEEING, AND, YOU KNOW, IT'S STILL MAY AND TRIAL IS NOT
09:30AM 16 UNTIL AUGUST, SO I BUILT IN THIS TIME SO THAT WE CAN HAVE A
09:30AM 17 FAIR TRIAL AS OPPOSED TO AN "I'VE GOTCHA TRIAL."

09:31AM 18 IT APPEARS THAT YOU HAVE SUBMITTED REPORTS ON WHICH
09:31AM 19 SPACE DATA SHOULD HAVE HAD THE OPPORTUNITY TO SUBMIT A REBUTTAL
09:31AM 20 REPORT, AND THAT'S THE PIECE THAT IS MISSING HERE FOR YOU TO BE
09:31AM 21 ABLE TO GO FORWARD.

09:31AM 22 I'M SYMPATHETIC TO YOUR CIRCUMSTANCE WHERE YOU WERE -- I
09:31AM 23 THINK YOU REASONABLY ANTICIPATED A PLAINTIFF'S EXPERT REPORT ON
09:31AM 24 THE LIABILITY PHASE WHICH YOU DIDN'T GET IN THE TRADE SECRET
09:31AM 25 SIDE.

09:31AM 1 CERTAINLY MR. ATKINSON IS CORRECT, YOU HAD THIS
09:31AM 2 CONVERSATION. YOU COULD HAVE ASKED FOR A MODIFICATION OF THE
09:31AM 3 CASE SCHEDULE WHEN YOU DIDN'T GET THE REPORT, BUT YOU DIDN'T.

09:31AM 4 AND YOU PRESENTED A REBUTTAL REPORT, SO SPACE DATA KNOWS
09:31AM 5 EXACTLY WHAT YOUR THEORIES ARE.

09:31AM 6 SO REALLY, IT MAY BE THAT THE CURATIVE HERE IS SIMPLY TO
09:31AM 7 ALLOW SPACE DATA A SURREBUTTAL REPORT SO THAT WE HAVE -- WE PUT
09:32AM 8 EVERYBODY BACK ON AN EVEN PLAYING FIELD, AND I THINK THERE IS
09:32AM 9 AMPLE TIME FOR A SURREBUTTAL REPORT TO BE PREPARED WITH A SHORT
09:32AM 10 DEPOSITION TO FOLLOW, WHICH, OF COURSE, WE ALWAYS WOULD DO. I
09:32AM 11 CERTAINLY WOULD ALLOW YOU A REASONABLE PERIOD OF TIME IN THE,
09:32AM 12 YOU KNOW, TWO HOUR FRAME, OR SOMETHING MODEST LIKE THAT.

09:32AM 13 WHAT IS YOUR VIEW ON THAT?

09:32AM 14 MR. WERDEGAR: YOUR HONOR, I DON'T WANT TO
09:32AM 15 MONOPOLIZE THE WHOLE CONVERSATION, BUT I DO THINK THAT --
09:32AM 16 CERTAINLY WE DON'T WANT "A GOTCHA TRIAL."

09:32AM 17 AND I THINK THE OUTCOME THAT SPACE DATA IS ADVOCATING HERE
09:32AM 18 I THINK WOULD SWING THE PENDULUM CERTAINLY THE OTHER DIRECTION
09:32AM 19 TO AN "I'VE GOTCHA TRIAL."

09:32AM 20 SO IF THAT'S WHERE THE COURT COMES OUT, I CERTAINLY THINK
09:32AM 21 THAT'S BETTER THAN THE ALTERNATIVE SPACE DATA IS SEEKING.

09:32AM 22 I GUESS I WILL NOTE HERE WITH RESPECT TO DR. HANSMAN, AND
09:32AM 23 I THINK WITH RESPECT TO DR. INGBERMAN, TOO, THAT THEY HAVE PUT
09:32AM 24 FORTH AN OPENING EXPERT, A DAMAGES EXPERT, BUT WHO CONVEYS ALL
09:33AM 25 OF THE POINTS THAT ARE BEING REBUTTED.

09:33AM 1 SO EVERYTHING THAT DR. HANSMAN HAS IN HIS REPORT, AND
09:33AM 2 MR. KAMBER CAN ADDRESS THIS IN MORE DETAIL, BUT ALSO
09:33AM 3 DR. INGBERMAN, THEY ARE RESPONDING TO THINGS THAT SPACE DATA
09:33AM 4 DOES INTEND TO HAVE AN OPENING EXPERT IN ITS CASE-IN-CHIEF SAY
09:33AM 5 AND IN CONNECTION WITH AND INTERTWINED WITH HER CONCLUSIONS
09:33AM 6 ABOUT WHY GOOGLE WAS UNJUSTLY ENRICHED.

09:33AM 7 THE COURT: AND DR. INGBERMAN, I HAVE NO PROBLEM
09:33AM 8 WITH HIM ATTACKING HER METHODOLOGY, AND I HAVE NO PROBLEM WITH
09:33AM 9 HIM GIVING HIS OPINION ABOUT WHAT SHE FAILED TO DO AND AN
09:33AM 10 OPINION THAT HER ASSUMPTIONS ARE SHE DIDN'T PERFORM THE PROPER
09:33AM 11 WORK TO SOLIDIFY HER ASSUMPTIONS. I DON'T HAVE ANY PROBLEM AT
09:33AM 12 THAT LEVEL. THAT'S AT A PRETTY HIGH LEVEL.

09:33AM 13 WHEN HE GOES ON TO SAY THAT THERE WAS A SUFFICIENT BODY OF
09:33AM 14 PUBLIC INFORMATION THAT WOULD HAVE ALLOWED GOOGLE TO MAKE ITS
09:34AM 15 DEVELOPMENT WITHOUT USE OF THE TRADE SECRETS, WE'RE BACK INTO
09:34AM 16 THE LIABILITY PHASE, NOT THE DAMAGES.

09:34AM 17 SO THAT'S WHY -- AND YET I SEE THAT YOU -- I MEAN, THIS IS
09:34AM 18 SORT OF AN ODD SITUATION WHERE THE DECISION NOT TO USE AN
09:34AM 19 EXPERT CAME AT A PROPER TIME, BUT AT THE TIME OF DISCLOSURE OF
09:34AM 20 EXPERT REPORTS.

09:34AM 21 SO THERE'S PLENTY THAT DR. INGBERMAN CAN TESTIFY TO, AND
09:34AM 22 WE'RE NOT LOOKING AT EXCLUDING HIM.

09:34AM 23 WE WOULD BE WITH DR. HANSMAN REBUTTING HIS -- THE REBUTTAL
09:34AM 24 ON DR. HANSMAN I'M, I'M -- I GUESS, A LITTLE BIT MORE CONCERNED
09:34AM 25 ABOUT BECAUSE I THINK HE IS THE TECHNICAL EXPERT WHO COMES IN

09:34AM 1 TO ATTACK HER ASSUMPTIONS, AND I THINK THAT GOES RIGHT BACK TO
09:34AM 2 LIABILITY.

09:34AM 3 SO I'M MUCH MORE CONCERNED ABOUT THAT. BUT WE'LL GET TO
09:34AM 4 DR. HANSMAN IN JUST A MOMENT.

09:34AM 5 THANK YOU, MR. WERDEGAR.

09:35AM 6 MR. WERDEGAR: THANK YOU, YOUR HONOR.

09:35AM 7 THE COURT: ALL RIGHT. MR. KAMBER, WE'VE BEEN
09:35AM 8 THROUGH A LOT OF THAT.

09:35AM 9 LET'S SEE WHAT WE CAN TALK ABOUT ON DR. HANSMAN.

09:35AM 10 MR. KAMBER: SURE. SO LET ME START ON DR. HANSMAN
09:35AM 11 BY QUOTING YOU. YOU REFERRED TO, WITH RESPECT TO
09:35AM 12 DR. INGBERMAN, A QUOTE, "TRUE DAUBERT MOTION."

09:35AM 13 THAT'S NOT WHAT THIS IS.

09:35AM 14 THE COURT: NO, IT'S NOT.

09:35AM 15 MR. KAMBER: WE'RE NOT TALKING ABOUT 702, OR
09:35AM 16 DAUBERT, OR KUMHO TIRE, OR ANYTHING LIKE THAT.

09:35AM 17 WHAT SPACE DATA IS TALKING ABOUT IS A RULE 26 ISSUE, AND
09:35AM 18 WHAT I THINK THEY'RE SEEKING HERE IS RULE 37 RELIEF, ALTHOUGH
09:35AM 19 THEY NEVER ACTUALLY REFER TO RULE 37 ANYWHERE IN THEIR
09:35AM 20 BRIEFING.

09:35AM 21 SO I THINK WHAT THAT MEANS PROCEDURALLY IS THEY COULD AND
09:35AM 22 SHOULD HAVE BROUGHT THIS DURING DISCOVERY. THEY BROUGHT IT UP
09:35AM 23 THE DAY AFTER THE RECORD CAME IN. THERE WAS A DEADLINE TO FILE
09:36AM 24 MOTIONS RELATED TO EXPERT DISCOVERY, AND THIS WAS -- THIS IS A
09:36AM 25 MOTION TO STRIKE. ALL OF THE CASES THAT THEY CITE ARE MOTIONS

09:36AM 1 TO STRIKE. THEY CHOSE NOT TO MAKE A -- NOT TO FILE A MOTION TO
09:36AM 2 STRIKE, AND YET NOW THEY'RE THE ONES WHO MIGHT END UP WITH A
09:36AM 3 REBUTTAL REPORT OR A SURREBUTTAL.

09:36AM 4 THE COURT: SO YOU'RE CERTAINLY RIGHT, THIS IS
09:36AM 5 NOWHERE IN DAUBERT, AND THIS WAS SET AS DAUBERT HEARINGS. IT'S
09:36AM 6 COMMON AND ALMOST -- IT'S COMMON THAT THE PARTIES DO EXACTLY
09:36AM 7 WHAT SPACE DATA HAS DONE HERE AND BRING IN THESE ISSUES.

09:36AM 8 BUT I'M NOT -- SO I'VE ALLOWED IT. I'M NOT SURE THAT THEY
09:36AM 9 HAD TO MAKE THIS A MOTION TO STRIKE. I THINK IT CAN BE A
09:36AM 10 MOTION IN LIMINE BROUGHT A COUPLE OF WEEKS BEFORE TRIAL, BUT
09:36AM 11 THEY'VE BROUGHT IT EARLY SO THERE MAY ACTUALLY BE TIME TO CURE
09:36AM 12 THE PROBLEM IF I'M GOING TO RULE AGAINST YOU, I CAN ACTUALLY --
09:37AM 13 I MIGHT HAVE A SIDE DOOR HERE.

09:37AM 14 MR. KAMBER: SO ON THE ISSUE OF JUST THE POSSIBILITY
09:37AM 15 OF A SURREBUTTAL, IT SEEMS A LITTLE BIT PERVERSE HERE TO BE
09:37AM 16 QUITE HONEST, YOUR HONOR, BECAUSE THEY HAVE THE BURDEN OF
09:37AM 17 PROOF.

09:37AM 18 THE COURT: YES.

09:37AM 19 MR. KAMBER: THEY HAVE THE BURDEN TO ESTABLISH THAT
09:37AM 20 THESE TRADE SECRETS ARE IN FACT TRADE SECRETS, THAT GOOGLE USED
09:37AM 21 THEM. THEY BORE THE BURDEN ON ALL OF THOSE THINGS, AND THEY
09:37AM 22 DECIDED, I THINK STRATEGICALLY PERHAPS, OR NOT, TO NOT HAVE AN
09:37AM 23 EXPERT PUT IN AN OPINION.

09:37AM 24 THEY DIDN'T GET -- THEY WEREN'T SURPRISED BY THIS NOR WAS
09:37AM 25 IT UNFAIR.

09:37AM 1 THEIR EXPERT SPENT TWO DAYS DISASSEMBLING THE PLATFORM,
09:37AM 2 TAKING PICTURES, TAKING VIDEO, DOING IT NOT JUST FOR PURPOSES
09:37AM 3 OF THE PATENT ANALYSIS, AND THEY DECIDED NOT TO PUT IN A
09:37AM 4 REPORT.

09:37AM 5 INSTEAD, WHAT THEY DECIDED TO DO WAS WE'LL GIVE A
09:37AM 6 MOUTHPIECE TO THE ALLEGATIONS, A PH.D. FROM M.I.T., AN
09:38AM 7 ECONOMIST WHO WILL SPONSOR THESE IDEAS THAT ARE VERY MUCH
09:38AM 8 INTERTWINED WITH THE ANALYSIS, AND WE CAN TALK ABOUT THAT IN A
09:38AM 9 MINUTE, AND THEY HAD THE OPPORTUNITY TO DO ALL OF THOSE THINGS,
09:38AM 10 AND THEN WE CHALLENGED THOSE ASSUMPTIONS.

09:38AM 11 IT DOESN'T SEEM FAIR AT THIS POINT TO SAY, OH, YOU WENT
09:38AM 12 FIRST AS A DEFENDANT AND NOW EVEN THOUGH WE, SPACE DATA, HAD
09:38AM 13 EVERY OPPORTUNITY TO PUT IN AN OPENING REPORT, HAD ALL OF THE
09:38AM 14 EVIDENCE.

09:38AM 15 THE COURT: SO YOU'RE SUGGESTING THAT WHEN A
09:38AM 16 PLAINTIFF EXERCISES ITS RIGHT TO PRESENT LIABILITY THROUGH
09:38AM 17 PERCIPIENT WITNESSES, IT ULTIMATELY DEPRIVES THE DEFENSE OF THE
09:38AM 18 OPPORTUNITY TO HAVE AN EXPERT REBUT THE EVIDENCE, YOU'D HAVE TO
09:38AM 19 REBUT IT WITH OTHER PERCIPIENT WITNESSES.

09:38AM 20 MR. KAMBER: YOU WOULD, BUT UNLESS YOU'RE IN A
09:38AM 21 SITUATION LIKE THIS WHERE INSTEAD OF TRYING TO PRESENT IT, THEY
09:39AM 22 PRESENT IT BY WAY OF ASSUMPTIONS, AND THEY SAY THOSE
09:39AM 23 ASSUMPTIONS ARE SOMEHOW IMMUNIZED FROM ATTACK BY REBUTTAL
09:39AM 24 EXPERTS, WHICH ISN'T TRUE.

09:39AM 25 THE COURT: RIGHT. AND THAT'S WHERE I'M ACTUALLY

09:39AM 1 VERY CONCERNED HERE. I DON'T THINK AT THE TIME YOUR INITIAL
09:39AM 2 EXPERT REPORTS WERE DUE YOU COULD HAVE HAD -- YOU DIDN'T KNOW
09:39AM 3 THE BASIS ON WHICH SPACE DATA WOULD PRESENT ITS MISUSE THEORY
09:39AM 4 BECAUSE ALTHOUGH YOU HAVE THE DEPOSITIONS OF THEIR PERCIPIENT
09:39AM 5 WITNESSES, YOU DON'T HAVE THE DIRECT TESTIMONY OF THE
09:39AM 6 PERCIPIENT WITNESSES.

09:39AM 7 SO YOU'D BE SHADOWBOXING, WHICH IS NOT REQUIRED.

09:39AM 8 MR. KAMBER: THAT'S RIGHT.

09:39AM 9 THE COURT: AND THAT'S WHERE, THAT'S WHERE I HAVE A
09:39AM 10 REAL PROBLEM WITH THIS CIRCUMSTANCE WE'RE IN, AND I WANT TO BE
09:40AM 11 CLEAR, WHERE SPACE DATA HAS EXERCISED ITS RIGHT TO PRESENT
09:40AM 12 THEIR CASE THROUGH PERCIPIENT WITNESSES, IT LEAVES US WITH A
09:40AM 13 LITTLE BIT OF A GAP, AND AN INABILITY OF A DEFENDANT TO OFFER
09:40AM 14 WHAT IS TRULY REBUTTAL TO THE EVIDENCE AND THE THEORY OF
09:40AM 15 LIABILITY PRESENTED BY PLAINTIFF.

09:40AM 16 BECAUSE OTHERWISE, FRANKLY, YOU WOULD HAVE NEEDED AN
09:40AM 17 EXPERT TO SCOUR THE WATERFRONT ON ALL POTENTIAL THEORIES. I
09:40AM 18 MEAN, YOU WOULD HAVE BECOME THEIR, ESSENTIALLY THEIR ADVOCATE.
09:40AM 19 YOU WOULD HAVE HAD TO BUILD UP EVERY STRAW MAN AND KNOCK IT
09:40AM 20 DOWN, AND THAT'S NOT YOUR JOB.

09:40AM 21 MR. KAMBER: THAT'S RIGHT.

09:40AM 22 THE COURT: AND SO THAT'S MY CONCERN HERE, AND
09:40AM 23 THAT'S WHY I THINK THAT IT IS -- WHEN DR. MEYER AS AN EXPERT
09:40AM 24 DOES PUT HER IMPRIMATUR ON THE ASSUMPTIONS AND THEN BUILDS THEM
09:40AM 25 IN, THAT SHE CAN'T GET A FREE RIDE ON THAT.

09:40AM 1 I DON'T THINK CROSS-EXAMINATION -- TO JUST SAY
09:41AM 2 CROSS-EXAMINATION OF HER AND HER -- AND THE -- AND ARGUMENT AS
09:41AM 3 TO WHY THE PERCIPIENT WITNESSES WERE NOT SUFFICIENT TO PROVE
09:41AM 4 TRADE SECRETS IS ENOUGH, SO I'M -- I'M TRYING TO -- I WANT TO
09:41AM 5 MAKE SURE, THOUGH, THAT SPACE DATA IS GIVEN AN OPPORTUNITY TO
09:41AM 6 PRESENT ITS EVIDENCE BUT -- SO LET ME JUST -- SO WE HAD YOUR --
09:41AM 7 YOU -- THERE WERE NO EXPERT REPORTS OTHER THAN DAMAGES REPORTS
09:41AM 8 AT THE INITIAL EXPERT DISCLOSURE.

09:41AM 9 MR. KAMBER: THERE WAS LIABILITY ON THE PATENTS BUT
09:41AM 10 NOT ON THE TRADE SECRETS.

09:41AM 11 THE COURT: OKAY. SO THERE WAS -- OKAY. SO JUST ON
09:41AM 12 THE TRADE SECRETS.

09:41AM 13 AND THEN YOU HAD YOUR TWO EXPERT REBUTTAL REPORTS.

09:41AM 14 MR. KAMBER: CORRECT.

09:41AM 15 THE COURT: AND THE ONE DR. MEYER REPORT THAT
09:42AM 16 SUPPORTS THE DAMAGES.

09:42AM 17 MR. KAMBER: THEY'VE NEVER -- SORRY.

09:42AM 18 THE COURT: AND THEN SPACE DATA HAD THE OPPORTUNITY
09:42AM 19 TO TAKE THE DEPOSITION OF DR. HANSMAN AND DR. INGBERMAN ON
09:42AM 20 THEIR REBUTTAL REPORTS?

09:42AM 21 MR. KAMBER: THEY DID. THEY TOOK -- THEY DEPOSED
09:42AM 22 BOTH OF THE WITNESSES AND ASKED THEM ABOUT THESE ISSUES AND
09:42AM 23 DIDN'T ASK FOR REBUTTAL UP UNTIL TODAY.

09:42AM 24 THE COURT: AND THERE'S NO EXPERT -- I MEAN,
09:42AM 25 DR. MEYER, I MEAN, I DON'T KNOW WHO THEY -- I'M NOT -- I DON'T

09:42AM 1 KNOW WHETHER -- I MEAN, THE IDEA THAT THEY CAN NOW BRING IN AN
09:42AM 2 EXPERT TO REBUT YOUR EXPERT IS -- I'M NOT SURE I WANT TO OPEN
09:42AM 3 THAT DOOR.

09:42AM 4 MR. KAMBER: THIS IS THE PROBLEM IS THAT THEY CHOSE
09:42AM 5 NOT TO GO FIRST, THEY PUT THE BURDEN ON US TO REBUT
09:42AM 6 ASSUMPTIONS, AND THEN FOR THEM TO GET A CHANCE TO NOW PRESENT
09:42AM 7 THEIR CASE THROUGH -- HAVING SEEN US PUT OUT OUR CARDS FIRST AS
09:42AM 8 DEFENDANTS AND ADDRESS THE EVIDENCE THAT IS, AS YOU POINT OUT,
09:43AM 9 IS INTERTWINED WITH HER ANALYSIS DOESN'T SEEM LIKE A FAIR
09:43AM 10 SITUATION HERE.

09:43AM 11 THIS IS SCREWY AND WE'VE -- WE WERE THINKING ABOUT THE
09:43AM 12 SAME ISSUE. IS IT ENOUGH TO JUST CROSS-EXAMINE DR. MEYER AND
09:43AM 13 DO IT THAT WAY?

09:43AM 14 OUR SENSE IS THE SAME AS YOURS, YOUR HONOR. THAT DOESN'T
09:43AM 15 REALLY DO THE TRICK. THERE'S A LITTLE BIT OF A -- SHE CAN JUST
09:43AM 16 SAY I DON'T KNOW, AND IT'S NOT PARTICULARLY EFFECTIVE.

09:43AM 17 THE COURT: WELL, I MEAN, DR. -- I'VE SEEN DR. MEYER
09:43AM 18 HERE IN OTHER TRIALS. SHE'S VERY EXPERIENCED. SHE'S A VERY --
09:43AM 19 SHE'S A -- SHE HAS A SUPERB REPUTATION. SHE'S BEEN IN MANY
09:43AM 20 COURTROOMS IN HER CAREER.

09:43AM 21 SHE BRINGS A DEGREE OF CREDIBILITY AND PROFESSIONALISM TO
09:43AM 22 THE COURT. AND SO THAT IS THE, AS I SAY, THAT'S THE STAMP OF
09:43AM 23 APPROVAL THAT I'M A LITTLE BIT CONCERNED ABOUT.

09:43AM 24 MR. KAMBER: SO ARE WE.

09:43AM 25 THE COURT: YES.

09:43AM 1 MR. KAMBER: LET ME POINT OUT ONE THING, YOUR HONOR.

09:43AM 2 THEY DIDN'T PUT IN A LIABILITY EXPERT OF THEIR OWN.

09:44AM 3 THE COURT: UH-HUH, YEAH.

09:44AM 4 MR. KAMBER: AND SO THEY'RE SAYING THAT ESSENTIALLY

09:44AM 5 WE CAN'T PRESENT A REBUTTAL LIABILITY EXPERT, EITHER.

09:44AM 6 BUT WHAT IS WORSE IS THAT THEY'RE SAYING THAT NO EXPERT

09:44AM 7 CAN REBUT EVEN THE FACTUAL TECHNICAL ASSUMPTIONS OF THEIR

09:44AM 8 DAMAGES EXPERT, AGAIN, WITH THAT IMPRIMATUR OF -- IMPRIMATUR,

09:44AM 9 EXCUSE ME --

09:44AM 10 THE COURT: -- IS APPROPRIATE.

09:44AM 11 MR. KAMBER: -- OF HER DEGREE AND HER

09:44AM 12 QUALIFICATIONS.

09:44AM 13 WHAT SEEMS TO BE HAPPENING THROUGH THE RULES IN A WEIRD

09:44AM 14 WAY IS THAT THEY WANT TO BOOTSTRAP THEIR WAY INTO AN

09:44AM 15 UNREBUTTABLE CASE OF TRADE SECRET MISAPPROPRIATION.

09:44AM 16 THEY'RE SAYING THAT, YOU KNOW, THEY CAN REST THEIR CASE

09:44AM 17 AND THEIR THEORIES ON TECHNICAL ASSUMPTIONS BY A DAMAGES EXPERT

09:44AM 18 THAT ARE IMMUNE FROM CHALLENGE BY OUR REBUTTAL EXPERTS.

09:44AM 19 WE THINK THAT'S NOT RIGHT. THE LAW IN PINTEREST AND

09:45AM 20 LAFLAWN (PHONETIC) AND OTHERS IS CLEAR, WE CAN CHALLENGE THE

09:45AM 21 ASSUMPTIONS.

09:45AM 22 THERE'S NO CASE LAW SUPPORTING THE IDEA THAT THEY -- THAT

09:45AM 23 WE CAN'T PRESENT THAT TYPE OF REBUTTAL TESTIMONY, AND THERE'S

09:45AM 24 NO CASE LAW THAT WOULD SUGGEST THAT THEY NOW, HAVING BORNE THE

09:45AM 25 BURDEN OF PROOF AND BEARING THE BURDEN OF PROOF THROUGHOUT,

09:45AM 1 SOMEHOW GET TO DO A SURREBUTTAL HAVING CHOSEN TO WAIT AND
09:45AM 2 HAVING HAD ALL OF THE OPPORTUNITY IN THE WORLD TO PRESENT AN
09:45AM 3 OPENING REPORT ON THIS ISSUE.

09:45AM 4 THE COURT: OKAY. MR. ATKINSON, I'LL LET YOU FINISH
09:45AM 5 UP.

09:45AM 6 MR. ATKINSON: THANK YOU, YOUR HONOR.

09:45AM 7 YOUR HONOR, I THINK YOU PRETTY MUCH UNDERSTAND THE ISSUE,
09:45AM 8 WHICH IS THAT SPACE DATA IS BEING SUBSTANTIALLY PREJUDICED IF
09:45AM 9 IT DOESN'T HAVE AN OPPORTUNITY TO PRESENT AN EXPERT.

09:45AM 10 SO HERE WE HAVE A SITUATION WHERE FIRST OFF THE DEFENDANTS
09:45AM 11 DID HAVE AN OPPORTUNITY TO AT LEAST ATTACK THE FACT THAT WE
09:45AM 12 DIDN'T PUT IN A LIABILITY EXPERT OURSELVES. THEY DID THAT AT
09:45AM 13 SUMMARY JUDGMENT, AND YOUR HONOR FOUND THAT WE COULD RELY ON
09:46AM 14 LAY OPINION -- I MEAN, I AM SORRY, LAY FACT EVIDENCE IN THAT
09:46AM 15 REGARD.

09:46AM 16 IN THAT CASE WHAT WE PLANNED TO DO IS PUT ON THOSE LAY
09:46AM 17 WITNESSES TO PRESENT OUR TRADE SECRETS LIABILITY CASE, BOTH OUR
09:46AM 18 WITNESSES AND THE DEFENDANTS, AND THEN DR. MEYER WILL OPINE ON
09:46AM 19 DAMAGES. SHE'S NOT OPINING ON LIABILITY.

09:46AM 20 SO I THINK THERE IS SOME CONFLATING OF WHAT HER TRUE
09:46AM 21 ASSUMPTIONS ARE, WHICH ARE VERY NORMAL AND STANDARD FOR A
09:46AM 22 DAMAGES EXPERT TO MAKE AND ARE ACTUALLY VERY NARROW DAMAGES
09:46AM 23 OPINION WHICH IS BASED ON UNJUST ENRICHMENT, YOUR HONOR.

09:46AM 24 ON THE POINT OF THE CASES, THE CASES THAT GOOGLE CITES
09:46AM 25 DOES NOT SUPPORT ITS POSITION. THE PINTEREST CASES OR THE

09:46AM 1 PEREZ CASES INVOLVE SITUATIONS WHERE EITHER THE DAMAGES EXPERT
09:46AM 2 REQUESTS A DAMAGES EXPERT, OR A VOCATIONAL EXPERT REQUESTS A
09:46AM 3 VOCATIONAL EXPERT. THERE'S NO SITUATION WHERE A DAMAGES EXPERT
09:46AM 4 IS REQUIRED BY A LIABILITY EXPERT WHICH IS THE SITUATION THAT
09:46AM 5 WE FIND OURSELVES IN HERE.

09:46AM 6 YOUR HONOR, IT'S GOOGLE THAT HAS NO AUTHORITY ON THE POINT
09:46AM 7 THAT THEY WERE THE ONES THAT COULD JUST SIT BACK AND DO NOTHING
09:46AM 8 WHEN THE CASE LAW, THEIR OWN CASES ARE VERY CLEAR THAT THEY'RE
09:47AM 9 THE ONES WHO BEAR THE RISK ON THIS ISSUE. BOTH THE CASES THAT
09:47AM 10 WE CITE, YOUR HONOR'S CASE CLEAR-VIEW, AND OTHER OPINIONS FROM
09:47AM 11 MULTIPLE DISTRICTS ARE VERY CLEAR ON THAT ONE POINT, YOUR
09:47AM 12 HONOR.

09:47AM 13 THE COURT: SO I'M GOING TO THROW THIS OUT, ALTHOUGH
09:47AM 14 IT'S SOMETHING THAT I DON'T LIKE TO DO AND I PROBABLY WON'T,
09:47AM 15 BUT I WOULD LIKE TO EXPLORE IT.

09:47AM 16 WOULD WE CURE THIS PROBLEM IF WE HAVE A LIABILITY PHASE, A
09:47AM 17 VERDICT, AND THEN, SAME JURY, IT'S JUST GOING TO BE A JURY
09:47AM 18 DELIBERATING TWICE, AND THEN A DAMAGES PHASE? I SAY I HATE
09:47AM 19 DOING THAT. I -- USUALLY I DON'T ALLOW THAT, BUT I'M JUST
09:47AM 20 WONDERING, BECAUSE THEN WE WOULD NOT HAVE -- I THINK THE
09:47AM 21 BIGGEST CONCERN BY GOOGLE IS THAT DR. MEYER WILL ASSIST IN
09:47AM 22 PROVING MISUSE, WHICH SHE CAN'T DO.

09:48AM 23 MR. ATKINSON: YOUR HONOR, ON THE SPOT I GUESS I
09:48AM 24 DON'T.

09:48AM 25 THE COURT: I DID PUT YOU ON THE SPOT.

09:48AM 1 MR. ATKINSON: I'M TRYING TO THINK WHETHER THERE
09:48AM 2 ARE --

09:48AM 3 THE COURT: IT'S NOT SOMETHING THAT WE HAVE TO
09:48AM 4 DECIDE TODAY. IF YOU HAVE SOME IMMEDIATE THOUGHTS, IT WOULD BE
09:48AM 5 HELPFUL.

09:48AM 6 MR. ATKINSON: IMMEDIATE THOUGHTS ON THIS LIMITED
09:48AM 7 ISSUE THAT SEEMS LIKE IT WOULD BE FINE.

09:48AM 8 IN TERMS OF THE AMOUNT OF DUPLICATION, FOR EXAMPLE, WITH
09:48AM 9 REGARDS TO THE -- HOW DOES YOUR HONOR FORESEE THEN THE
09:48AM 10 EXEMPLARY DAMAGES PORTION OF THE TRIAL PROCEEDING? WOULD THAT
09:48AM 11 STILL BE WITH THE LIABILITY PHASE AND THEN --

09:48AM 12 THE COURT: NO, NO. ALL DAMAGES. WELL, ALL DAMAGES
09:48AM 13 WOULD BE IN THE SECOND PHASE. AND I'M TALKING ABOUT A SINGLE
09:48AM 14 JURY THAT IS TOLD UPFRONT, FIRST YOU'RE GOING TO HEAR LIABILITY
09:48AM 15 AND THEN YOU'RE GOING TO DELIBERATE, AND TELL THEM EXACTLY WHAT
09:48AM 16 THEY'RE GOING TO DO, BUT THAT WAY I THINK WE -- I MEAN, IT IS A
09:48AM 17 WAY OF ADDRESSING THE CONCERN THAT DR. MEYER IMPROPERLY
09:48AM 18 TESTIFIES ON MISUSE.

09:49AM 19 MR. ATKINSON: YOUR HONOR, I -- ON THE SPOT I DON'T
09:49AM 20 THINK WE WOULD HAVE A PROBLEM. THAT ACTUALLY SOUNDS LIKE IT
09:49AM 21 WOULD -- SO THERE WOULD BE NO --

09:49AM 22 THE COURT: I MEAN, EXEMPLARY DAMAGES TAKE A
09:49AM 23 DIFFERENT KIND OF PROOF. SO WE -- BECAUSE I THINK THERE HAS TO
09:49AM 24 BE WILLFULNESS, DOESN'T THERE?

09:49AM 25 MR. ATKINSON: YES, YOUR HONOR.

09:49AM 1 THE COURT: SO THAT'S A DIFFERENT -- I MEAN, THAT'S
09:49AM 2 A DIFFERENT ASPECT, BUT --

09:49AM 3 MR. KAMBER, DO YOU HAVE ANY REACTIONS TO --

09:49AM 4 MR. KAMBER: I'LL LET MR. WERDEGAR ADDRESS THIS.

09:49AM 5 MR. WERDEGAR: YOUR HONOR, I THINK I WOULD BEG THE
09:49AM 6 COURT'S INDULGENCE AND ASK FOR A CHANCE TO CONSULT WITH MY
09:49AM 7 CLIENT ABOUT IT.

09:49AM 8 THE COURT: YES.

09:49AM 9 MR. WERDEGAR: BUT MY INITIAL REACTION IS THAT I
09:49AM 10 THINK IT'S AN INCOMPLETE SOLUTION TO THE PROBLEMS THAT WE'VE
09:49AM 11 BEEN TALKING ABOUT THIS MORNING.

09:49AM 12 THE PRIMARY THING BEING THAT IT DOESN'T REALLY REMEDY THE
09:49AM 13 SITUATION THAT WE'VE FOUND OURSELVES IN THAT YOU'VE RECOGNIZED
09:49AM 14 OF HAVING TO SHADOWBOX.

09:49AM 15 THE COURT: YES.

09:49AM 16 MR. WERDEGAR: WHERE WE HAD TO -- WE WOULD HAVE HAD
09:49AM 17 TO HAVE COME UP WITH OUR BEST VERSION OF WHAT PLAINTIFF'S CASE
09:49AM 18 MIGHT BE, AND THEN KNOCK THAT DOWN AND CHASE EVERY STRAW MAN IF
09:49AM 19 WE HAD DONE --

09:50AM 20 THE COURT: RIGHT.

09:50AM 21 MR. WERDEGAR: -- SO WE'LL BE LEFT IN A SITUATION
09:50AM 22 WHERE WE'LL BE PENALIZED FOR HAVING EXPECTED REASONABLY, I
09:50AM 23 THINK, OPENING REPORTS, NOT HAVING RECEIVED THEM.

09:50AM 24 THE COURT: THAT'S A GOOD POINT. SO, MR. WERDEGAR,
09:50AM 25 LET ME CIRCLE BACK TO THE INTERROGATORY RESPONSES.

09:50AM 1 IS IT CORRECT THAT WHEN YOU ASKED IN INTERROGATORIES FOR
09:50AM 2 RESPONSES ON THE EVIDENCE THAT WOULD SUPPORT MISUSE, THAT THE
09:50AM 3 OBJECTION WAS POSED THAT YOU WILL LEARN IT IN THE EXPERT
09:50AM 4 REPORTS? IS THAT A -- THAT'S A --

09:50AM 5 MR. WERDEGAR: THE OBJECTION WAS INTERPOSED. TO BE
09:50AM 6 FAIR, WE DID GET A SUM AND SUBSTANCE RESPONSE AS WELL, BUT THE
09:50AM 7 OBJECTION WAS INTERPOSED THAT THIS TYPE OF INTERROGATORY WAS
09:50AM 8 PREMATURE, AND IT WAS A CITATION TO OPENING EXPERT REPORTS ARE
09:50AM 9 DUE ON SEPTEMBER 10, 2018, OR WHATEVER IT WAS.

09:50AM 10 THE COURT: AND YOU DIDN'T KNOW THERE WOULD BE ANY
09:50AM 11 OPENING EXPERT REPORTS UNTIL THE DAY CAME AND WENT.

09:51AM 12 MR. WERDEGAR: CORRECT.

09:51AM 13 THE COURT: IS THAT WHERE YOU SHAKE THE ENVELOPE TO
09:51AM 14 SEE IF SOMETHING DIDN'T FALL OUT?

09:51AM 15 MR. WERDEGAR: THAT IS RIGHT. THAT'S THE ENVELOPE
09:51AM 16 IS LIKE COLLEGE APPLICATION SEASON. SO WE RECEIVED THEIR
09:51AM 17 OPENING REPORTS AND WE GOT WHAT WE GOT AND HADN'T GOTTEN PRIOR
09:51AM 18 NOTICE.

09:51AM 19 THE COURT: I THINK THAT IS NOT A GOOD IDEA. I
09:51AM 20 DON'T LIKE DOING IT ANYWAY. BUT THANK YOU FOR YOUR JUST
09:51AM 21 OFF-THE-TOP THOUGHTS ON IT. THAT'S REALLY HELPFUL.

09:51AM 22 ALL RIGHT. WELL, I -- IT'S MY INCLINATION TO DENY THE
09:51AM 23 MOTION AS TO DR. HANSMAN AND TO DENY THE MOTION AS TO
09:51AM 24 DR. INGBERMAN WITH THE EXCEPTION OF HIS OPINIONS ON THE
09:51AM 25 FINANCIAL INFORMATION WHERE HE'S ACTUALLY VEERING INTO AN AREA

09:51AM 1 OF WHETHER OR NOT THERE'S MISUSE AND NOT BECAUSE IT LACKS
09:51AM 2 FOUNDATION. I THINK HE SIMPLY WASN'T DISCLOSED FOR THAT
09:51AM 3 PURPOSE.

09:51AM 4 AND SO I DON'T ACTUALLY HAVE SPECIFIC PARAGRAPHS THAT I
09:52AM 5 CAN EXCLUDE BASED ON THAT. I'VE NEVER LIKED TO BE THE ONE WHO
09:52AM 6 READS THE REPORT AND COMES UP WITH WHAT I THINK WOULD BE THOSE
09:52AM 7 PARAGRAPHS.

09:52AM 8 SO I SUPPOSE WHAT I WILL DO IS I'LL PREPARE THE ORDER WITH
09:52AM 9 THE GENERAL FRAMEWORK AND THEN PROBABLY IF I STICK TO THIS, IS
09:52AM 10 ASK SPACE DATA TO IDENTIFY THE PARAGRAPHS THAT IT WOULD FIND
09:52AM 11 FALL WITHIN THE LIMITATION THAT I'M EXCLUDING, AND THEN I WOULD
09:52AM 12 ALLOW GOOGLE TO TELL ME WHY SOME OF THESE OPINIONS MIGHT NOT
09:52AM 13 BELONG UNDER THAT UMBRELLA TO BE EXCLUDED. THAT'S THE BEST
09:52AM 14 THAT I CAN DO.

09:52AM 15 YOU NEED TO SEE MY SPECIFIC ARTICULATION BEFORE YOU CAN
09:52AM 16 LOOK AT THE REPORT, AND I NEED TO THINK ABOUT HOW TO DIVIDE
09:53AM 17 THAT UP A LITTLE BIT.

09:53AM 18 BUT I'M REALLY CONCERNED THAT DR. INGBERMAN, WHO AS AN
09:53AM 19 ECONOMIST COULD HAVE DONE THAT ANALYSIS WITH THE FINANCIAL
09:53AM 20 TRADE SECRETS, WAS NOT DESIGNATED TO DO THAT.

09:53AM 21 AND IT -- SO IT'S A FAIRLY SMALL PART OF THE REPORT IS MY
09:53AM 22 RECOLLECTION, AND IT MAY BE THAT YOU DON'T ACTUALLY DISAGREE ON
09:53AM 23 THE SELECTION OF PARAGRAPHS, BUT I THINK YOU'RE BETTER OFF IF
09:53AM 24 YOU AND YOUR EXPERT KNOW THE PARAGRAPHS THAT ARE EXCLUDED SO
09:53AM 25 THAT THERE'S CLEAR DIRECTION AS TO WHAT NOT TO TALK ABOUT AT

09:53AM 1 TRIAL.

09:53AM 2 MR. WERDEGAR: THAT MAKES SENSE, YOUR HONOR. WE'LL
09:53AM 3 CERTAINLY WORK WITH OPPOSING COUNSEL ON THAT.

09:53AM 4 MR. ATKINSON: YOUR HONOR, MAY I MAKE ONE FINAL
09:53AM 5 COMMENT?

09:53AM 6 THE COURT: SURE. SURE.

09:53AM 7 MR. ATKINSON: SO, YOUR HONOR, IF DR. HANSMAN IS LET
09:53AM 8 IN, THEN SPACE DATA WILL BE IN A POSITION OF WHERE IT EXERCISED
09:53AM 9 ITS RIGHT CORRECTLY, AND IT DIDN'T DO ANYTHING WRONG THERE, TO
09:53AM 10 NOT HAVE A LIABILITY EXPERT WHILE THE DEFENDANTS WILL HAVE AN
09:53AM 11 UNREBUTTED LIABILITY EXPERT GOING ON TO MATTERS SUCH AS THE
09:54AM 12 ECONOMIC VALUE OF THE TRADE SECRETS AND WHETHER THEY WERE
09:54AM 13 PUBLICLY KNOWN WHICH WERE MATTERS THAT DR. MEYER WILL NOT BE
09:54AM 14 ABLE TO REBUT HIM ON.

09:54AM 15 THE COURT: SO THE PUBLICLY KNOWN. THESE EXPERTS
09:54AM 16 ARE NOT -- YOU KNOW, DR. HANSMAN IS GOING TO BE VERY LIMITED.
09:54AM 17 I MEAN, HE'S GOING TO HAVE TO ATTACK THE ASSUMPTIONS AND
09:54AM 18 EXPLAIN WHY HER VALUATION OPINIONS ARE FAULTY BECAUSE HER
09:54AM 19 ASSUMPTIONS ARE FAULTY.

09:54AM 20 AND WITH DR. INGBERMAN, AGAIN, WE'RE AT THE METHODOLOGY
09:54AM 21 LEVEL, NOT -- HE'S NOT GOING TO BE ABLE TO TESTIFY ABOUT WHAT
09:54AM 22 THE ACTUAL EVIDENCE WOULD SHOW. THAT'S, THAT'S -- I MEAN, HE
09:54AM 23 CERTAINLY CAN'T ON THE TECHNICAL TRADE SECRETS. HE CAN ONLY
09:54AM 24 ATTACK THE METHODOLOGY THAT SHE DID FAIL TO CONSIDER THE BODY
09:54AM 25 OF PUBLIC INFORMATION, BUT IT'S NOT FOR HIM TO TESTIFY ABOUT

09:54AM 1 WHAT WAS PUBLIC. THAT IS, THAT IS NOT SOMETHING THAT HE WAS
09:54AM 2 DISCLOSED TO DO.

09:54AM 3 THAT'S -- SO, YOU KNOW, THIS IS JUST A LITTLE TRICKY, BUT,
09:55AM 4 QUITE FRANKLY, I THINK THERE'S A LITTLE BIT OF FAULT TO GO
09:55AM 5 AROUND ON THIS PROMISE OF AN EXPERT ON LIABILITY AND THEN A
09:55AM 6 CHANGE IN STRATEGY UPON THE REPORT DATE. AND THERE IS NO -- I
09:55AM 7 REALLY BELIEVE THAT THERE IS NO WAY A DEFENDANT SHOULD HAVE THE
09:55AM 8 ONUS OF SHADOWBOXING YOUR THEORIES. I MEAN, FRANKLY, IT WOULD
09:55AM 9 BE LIKE SPACE DATA ENLISTING THIS OTHER GREAT LAW FIRM TO HELP
09:55AM 10 THEM IDENTIFY THEIR CASE FOR THEM. IT JUST DOESN'T WORK THAT
09:55AM 11 WAY.

09:55AM 12 SO, YOU KNOW, I -- OBVIOUSLY IT WOULD HAVE BEEN BETTER IF
09:55AM 13 ALL OF THIS HAD BEEN WORKED OUT, BUT I STILL DON'T THINK IT WAS
09:55AM 14 EVEN AT THE TIME OF DISCLOSURE, IT WAS NEVER GOOGLE'S
09:55AM 15 OBLIGATION TO COME UP WITH A REPORT BY AN EXPERT BEFORE THEY
09:55AM 16 KNEW WHAT YOUR -- WHAT YOUR BEST CASE WAS, WHAT YOUR EXPERTS
09:55AM 17 WERE SAYING.

09:55AM 18 YOU KNOW, THE FACT THAT YOU DON'T HAVE AN EXPERT COULD
09:56AM 19 BE -- THERE ARE SO MANY REASONS. IT COULD BE THAT YOUR
09:56AM 20 PERCIPIENT WITNESSES ARE SO PERSUASIVE THAT A JURY IS GOING TO
09:56AM 21 FIND THEM MORE CREDIBLE THAN ANY PAID EXPERT, OR IT COULD BE
09:56AM 22 THAT YOUR EXPERT SAID TO YOU, I CAN'T REALLY HELP YOU OUT HERE
09:56AM 23 GUYS, OR SOMETHING IN BETWEEN.

09:56AM 24 YOU KNOW, I -- NONE OF US WILL EVER KNOW. THAT'S
09:56AM 25 CONFIDENTIAL. BUT OBVIOUSLY THAT'S, THAT'S THE RANGE OF

POSSIBILITIES, THE TWO EXTREMES HERE.

AND, YOU KNOW, SO WE'LL SEE. BUT I THINK THAT THIS IS MORE THAN FAIR AND TO THE EXTENT THAT DR. MEYER -- YOU KNOW, HE CAN ONLY REBUT HER TESTIMONY AND HER -- THE OPINIONS SHE GIVES. THEY CAN'T REBUT SOMETHING THAT IS DEEP IN HER REPORT THAT SHE DOESN'T EVEN PRESENT TO THE JURY.

SO, YOU KNOW, HE'S GOING TO BE LISTENING CAREFULLY TO THAT TESTIMONY. I EXPECT THERE WILL BE A NUMBER OF OBJECTIONS. THIS IS GOING MAKE IT SORT OF A STICKY WICKET FOR THE TESTIMONY, AND I DON'T KNOW HOW MUCH SPECIFIC GUIDANCE I CAN GIVE YOU, BUT HOPEFULLY THROUGH THIS DISCUSSION YOU HAVE A GENERAL UNDERSTANDING.

MR. ATKINSON: YOUR HONOR, ON THAT POINT, WOULD THE COURT FIND A MOTION IN LIMINE THAT WAS FOCUSSED ON WHAT PORTIONS OF HANSMAN WE THOUGHT AND WHAT PORTIONS WE DIDN'T, AND IS THAT HELPFUL IF -- I'M SORRY.

SO GIVEN WHAT YOUR HONOR SAID ABOUT DR. HANSMAN WOULD BE LIMITED TO TRULY REBUTTING DR. MEYER, WOULD THE COURT FIND -- SO, FOR EXAMPLE, HIS PORTION OF THIS REPORT IS I THINK 60 PARAGRAPHS OR SO LONG.

WOULD THE COURT FIND A MOTION IN LIMINE HELPFUL IDENTIFYING WHICH PARAGRAPHS WE THOUGHT ONE SIDE VERSUS THE OTHER YOUR HONOR FINDS HELPFUL OR WOULD THAT BE SOMETHING --

THE COURT: YOU KNOW, THE INTERESTING THING WITH THAT IS THAT I'M NOT THINKING THAT THAT IS GOING TO BE HELPFUL

09:57AM 1 BECAUSE SO OFTEN IT DEPENDS FIRST ON WHAT DR. MEYER TESTIFIES
09:58AM 2 TO, AND, SECOND, HOW THE QUESTION WAS POSED TO DR. HANSMAN AT
09:58AM 3 TRIAL AND HOW HE RESPONDS TO IT.

09:58AM 4 SO THE WAY IN WHICH AN EXPERT COMPOSES A REPORT IS SO
09:58AM 5 DIFFERENT THAN THE WAY THAT THEY TESTIFY. I ACTUALLY THINK
09:58AM 6 THAT I WOULD DEFER RULING ON THAT SO YOU CAN SAVE ONE OF
09:58AM 7 YOUR --

09:58AM 8 MR. ATKINSON: THANK YOU, YOUR HONOR. THAT IS
09:58AM 9 HELPFUL.

09:58AM 10 THE COURT: I'M GLAD YOU RAISED IT BECAUSE YOU WOULD
09:58AM 11 BE WASTING YOUR IN LIMINE MOTION I THINK.

09:58AM 12 ALL RIGHT. I THINK THAT COVERS EVERYTHING FOR TODAY.

09:58AM 13 MR. ATKINSON: I THINK WE ACTUALLY HAVE ONE JOINT
09:58AM 14 HOUSEKEEPING ITEM.

09:58AM 15 THE COURT: SURE.

09:58AM 16 MR. ATKINSON: THE DOCKET REFLECTS THAT ON THE
09:58AM 17 FRIDAY BEFORE TRIAL THERE IS JURY SELECTION AS WELL AND THE
09:58AM 18 MONDAY BEFORE TRIAL.

09:58AM 19 THE COURT: THAT'S RIGHT.

09:58AM 20 MR. ATKINSON: WE WERE UNCLEAR IF YOUR HONOR
09:58AM 21 ENVISIONED JURY SELECTION ON ONE DAY OR STARTING ON FRIDAY.

09:58AM 22 THE COURT: THANK YOU FOR ASKING. THIS GIVES YOU
09:58AM 23 MORE TIME TO PREPARE. I ALWAYS PRESUME, AND, IN FACT, I
09:59AM 24 WELCOME AND WANT A QUESTIONNAIRE FOR THE JURY. AND MOST
09:59AM 25 LAWYERS LIKE AN ADEQUATE TIME TO READ THE QUESTIONNAIRE. SO IF

09:59AM 1 I DID IT ON MONDAY MORNING, I WOULD GIVE YOU NO TIME TO READ
09:59AM 2 IT.

09:59AM 3 SO I TYPICALLY BRING MY JURIES IN ON FRIDAY. YOUR CLIENTS
09:59AM 4 DON'T NEED TO BE HERE. THEY'LL GET THEIR INTRODUCTION TO JURY
09:59AM 5 SERVICE. WE'LL DO HARDSHIP. I WILL INTRODUCE THE
09:59AM 6 QUESTIONNAIRE, AND YOU -- I MEAN, YOU'LL BE IN THE COURTROOM,
09:59AM 7 AND I'LL INTRODUCE YOU VERY BRIEFLY. I WILL INTRODUCE THE
09:59AM 8 QUESTIONNAIRE AND LEAVE THEM TO COMPLETE THE QUESTIONNAIRE AND
09:59AM 9 THEN GO HOME WHEN THEY'RE DONE.

09:59AM 10 YOU THEN WILL HAVE THE WEEKEND TO CONSIDER WHAT YOU'VE
09:59AM 11 LEARNED FROM THE QUESTIONNAIRE AND THAT WAY ON MONDAY MORNING
09:59AM 12 YOU'RE READY -- YOU START RIGHT AWAY WITH YOUR VOIR DIRE OF THE
09:59AM 13 JURY. I TYPICALLY SWEAR IN MY JURIES BY 11:00 IN THE MORNING
09:59AM 14 ON THE MONDAY AND OPENING STATEMENTS START BEFORE LUNCH. SO
09:59AM 15 JUST TO BE READY ON THAT.

10:00AM 16 WE THEN GENERALLY SPEND THE REST OF THE FRIDAY HAVING OUR
10:00AM 17 JURY INSTRUCTION CONFERENCE. SO YOU SHOULD BE PREPARED FOR
10:00AM 18 THAT. I USUALLY -- I LAY ALL OF THIS OUT AT THE PRETRIAL
10:00AM 19 CONFERENCE, BUT FOR SCHEDULING I'M GLAD YOU RAISED IT SO THAT
10:00AM 20 YOU CAN BUILD THAT IN.

10:00AM 21 IF THE JURY INSTRUCTIONS ARE VERY COMPLEX AND DISPUTED AT
10:00AM 22 EVERY TURN, I SOMETIMES NEED A SECOND DAY, AND IT WOULD BE THE
10:00AM 23 DAY BEFORE, AND IT WOULD ALSO BE THE THURSDAY.

10:00AM 24 I DON'T THINK THE JURY INSTRUCTIONS ARE GOING TO BE THAT
10:00AM 25 COMPLICATED IN THIS CASE. I DON'T THINK THE 706 INSTRUCTION IS

10:00AM 1 GOING TO BE THAT HARD, AND I -- THE TRADE SECRET INSTRUCTIONS,
10:00AM 2 I MEAN, I DON'T KNOW. I JUST DON'T THINK THAT IT'S GOING TO BE
10:00AM 3 THAT COMPLICATED A SITUATION. I THINK WE CAN DO IT IN ONE
10:00AM 4 AFTERNOON.

10:00AM 5 BUT YOU HAVEN'T EVEN WRITTEN THOSE YET OR AT LEAST NOT IN
10:00AM 6 FINAL.

10:00AM 7 SO YOU'RE COMING BACK ON THE 21ST OF JUNE. IS THAT WHEN
10:01AM 8 YOUR FINAL PRETRIAL IS? OR IS IT IN JULY?

10:01AM 9 MR. KAMBER: I BELIEVE WE'RE IN JULY 19TH.

10:01AM 10 THE CLERK: YES.

10:01AM 11 THE COURT: OH, I'M SORRY. YOU KNOW, I CARVED OUT
10:01AM 12 SOME VACATION TIME SO I MOVED SOME UP AND MOVED SOME BACK.

10:01AM 13 OKAY. SO THAT'S -- I'M NOT CHANGING THAT. OH, SO WE HAVE
10:01AM 14 LOTS OF TIME.

10:01AM 15 THEN TRIAL IS AUGUST 6TH.

10:01AM 16 MR. KAMBER: AUGUST 5TH, I BELIEVE.

10:01AM 17 THE COURT: AUGUST 5TH. AND I'M GOING TO ACTUALLY
10:01AM 18 HAVE YOU COME IN ON THE 2ND TO DO THAT JURY QUESTIONNAIRE.

10:01AM 19 MR. ATKINSON: RIGHT.

10:01AM 20 MR. KAMBER: YES, YOUR HONOR.

10:01AM 21 THE COURT: OKAY. WELL, THAT WORKS OUT. YES, WE
10:01AM 22 HAVE PLENTY OF TIME. OKAY. I DON'T -- AND IT WAS MY
10:01AM 23 UNDERSTANDING THAT YOU STILL HAVE A MEDIATION SESSION COMING
10:01AM 24 UP; IS THAT CORRECT?

10:01AM 25 MR. ATKINSON: ON TUESDAY, YOUR HONOR.

10:01AM 1 MR. KAMBER: WE DO, YOUR HONOR, ON TUESDAY, JUNE 4TH
10:01AM 2 WITH MR. WOLF.

10:01AM 3 THE COURT: ALL RIGHT. GOOD. SO AS I SAY, I AM
10:02AM 4 PRETTY SURE THAT I'VE DECIDED ON THIS MOTION, I JUST REALLY
10:02AM 5 WANTED TO GIVE YOU MY BEST READ BEFORE YOUR MEDIATION.

10:02AM 6 MR. KAMBER: THANK YOU.

10:02AM 7 THE COURT: AND I THINK EVERYTHING ELSE, ALL OTHER
10:02AM 8 PENDING MOTIONS HAVE BEEN DECIDED.

10:02AM 9 SO YOU KNOW WHERE YOU ARE ON THAT.

10:02AM 10 MR. KAMBER: THAT'S RIGHT, YOUR HONOR.

10:02AM 11 THE COURT: ALL RIGHT. I THINK THAT TAKES CARE OF
10:02AM 12 EVERYTHING TODAY.

10:02AM 13 MR. ATKINSON: THANK YOU, YOUR HONOR.

10:02AM 14 MR. KAMBER: THANK YOU, YOUR HONOR.

10:02AM 15 MR. WERDEGAR: THANK YOU VERY MUCH, YOUR HONOR.

10:02AM 16 THE COURT: THANK YOU ALL.

10:02AM 17 THE CLERK: COURT IS ADJOURNED.

10:02AM 18 (COURT CONCLUDED AT 10:02 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: JUNE 4, 2019